

Approved: 3-26-96
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on March 15, 1996 in Room 254-E- of the Capitol.

All members were present:

Committee staff present:

Dennis Hodgins, Legislative Research Department
Ardan Ensley, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Leslie Kaufman, Assistant Director of Public Affairs Division, Kansas Farm Bureau
Carolyn McGinn, Wichita
Walt Porter, Admire
Charles H. Montange, Rails and Trails conservancy
Dale V. Crawford, Johnson County Bicycle Club
Terry Heidner, Kansas Department of Transportation
Daryl Becker, Meriden

Others attending: See attached list

SUB HB 2711--Concerning recreational trails; placing certain conditions on the operations of such trails

Leslie Kaufman, Assistant Director of Public Affairs Division, Kansas Farm Bureau, presented testimony in support of **SUB HB 2711** and the conditions it places on all trail developers and operators, whether public or private (Attachment 1). Ms. Kaufman told members the 1995 Legislature imposed many similar conditions on the Prairie Spirit rail-trail held by the Kansas Department of Wildlife and Parks. Other provisions of the bill were also supported in the belief they will help protect the property interests of landowners and the safety interests of trail users without unduly burdening rail-trail development or operation.

Carolyn McGinn, Wichita, presented testimony in support of **SUB HB 2711** stating recreational trails take many tax dollars to develop, therefore city and county governing bodies, if affected by the trail, should be in favor of the project (Attachment 2). Ms. McGinn stressed the point that individuals must be assured of representation when projects affect their livelihood and tax dollars, a point not addressed by the National Rails Act.

Walter Porter, a farmer in northern Lyon County, presented testimony in support of **SUB HB 2711** telling the Committee his family has farmed and lived along the Missouri-Pacific Railroad for 60 years and they were always a responsible party (Attachment 3). Areas of concern are control of noxious weeds, trash dumping and safety at road crossings. He also questioned the taxes paid by land owners with none paid on the trails.

Charles H. Montange, Rails to Trails Conservancy, presented testimony in opposition to **SUB HB 2711** stating as an attorney he specializes in railroad law, serving as outside counsel to Rails to Trails Conservancy (Attachment 4). The Rails to Trails Conservancy has petitioned the Surface Transportation Board to investigate A & K Salvage Company which has done nothing to develop nor appear willing to allow a legitimate trail group to take over corridors for management purposes without the payment of large sums of money. Mr. Montange stated that, without knowledge of legislative action in the state, a petition was filed to reopen the railbanking proceeding due to the actions of A & K Salvage Company. The petition has been opposed by the A & K Salvage Company. Anyone interested in this investigation was invited to support this petition.

Mr. Montange stated most problems with the trails seem to appear in early development stages. Statutes and techniques making it more difficult for a developer to correct the situation exacerbates the problem. Seeking

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 7:30 a.m. on March 15, 1996.

permission from numerous entities continues to slow down the process. He pointed out that the purpose of the National Systems Trails Act was to preserve the railroad right-of-ways as national or state assets which could serve future needs should they arise. Mr. Montange offered the opinion that various acts of the bill would violate the federal constitution. Rather than to have the situation taken from state hands Mr. Montange suggested developing a better set of management rules which will assist, not prevent development and promote good neighbors.

Dale V. Crawford, Board of Directors, Johnson County Bicycle Club, presented testimony in opposition to **SUB HB 2711** stating increasing numbers of bicyclists utilize the roadways and off-road recreation trails (Attachment 5). Mr. Crawford's testimony pointed out requirements of the bill which his organization felt were not acceptable such as fencing requirements, lack of flexibility to work with adjacent property owners, allowing city and county entities veto authority over federal legislation may be unconstitutional as well as the impact on economic development.

Terry Heidner, Kansas Department of Transportation, presented testimony on **SUB HB 2711** stating KDOT has a limited but important role in recreational trail development in the state since they administer Transportation Enhancements, part of the federal aid highway program which provides funding for such programs (Attachment 6). Mr. Heidner stated KDOT believes that any recreational trail where the responsible party is a government entity should be exempted from provisions of this bill. Other areas of difficulty are outlined in his testimony and he noted this legislation may conflict with the National Trails System Act. Mr. Heidner requested the definition of a recreational trail which appeared in the original bill be reinserted in the substitute bill.

Daryl Becker, Meriden, presented testimony in support of **SUB HB 2711** and provided information as a land owner through which a portion of right-of-way owned by A & K Corporation passes (Attachment 7). Mr. Becker related trash and garbage dumping, vehicle traffic, property trespass, use for a firing range as only a few of the problems encountered since A & K Salvage has purchased the right-of-way. Use of private land and stream being used by the general public is a continuing problem. Further, this area if used for trails needs a source of water and restrooms both of which take their toll on private land.

Mr. Becker stated the bill does not mention taxes, either those paid by others on their own land or lack of taxes paid on this land. He urged a period be allowed for development and if requirements are not met to let the land revert to the adjoining landowners from whence it originally came.

The meeting recessed at 9:00 a.m.

The next meeting is scheduled for March 18, 1996.

SENATE ENERGY & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: March 15, 1996

NAME	REPRESENTING
ROTH A. GATWOOD	DARYL BECKER
DARYL BECKER	MY SELF
MIKE BERGIN	MY SELF
GLADYS WUNDER	MY SELF
HAROLD WUNDER	MY SELF
ORVILLE W. BOBO	SELF
John Love	SELF
Amedia M ^o Intyre	KDWP
Michael Engemann	Kansas Horse Council
Bud Neese	KHC
Carolyn McGinn	Landowners/SEDS, Co. FARM BUREAU
Leslie Kaufman	Kansas Farm Bureau
Art Brown	mo - America's Livestock Producers Assn.
Mike Beam	Ks LIVSTK. ASSN.
Walter Foster	Area Landowners
Kim Guller	League of KS Municipalities
John L. Peterson	KC STM.
Mike Shields	Harris News
Meggan Griggs	Kearney Law Office



PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Re: Sub. H.B. 2711 - Establishes Conditions on the Operation of Recreational Rail-Trails

March 15, 1996
Topeka, Kansas

Presented by:
Leslie Kaufman, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Chairman Salee and members of the Committee, my name is Leslie Kaufman. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau.

Kansas Farm Bureau members have a long-standing belief that private lands should remain in private hands. To that end, members have adopted policy that supports the reversion of railroad right-of-way to the adjoining landowner. Kansas Farm Bureau opposes the National Rails-to-Trails Act, not because it permits recreational trails, but because it pre-empts state law and allows abandoned right-of-way to pass to an entity, other than the adjacent landowner.

In 1976, Congress enacted the Railroad Revitalization Act which established the policy of railbanking. Under the railbanking system, railroad

Senate Energy & Natural Res.
March 15, 1996
Attachment 1

lines that would otherwise be abandoned may be held by a public or private entity for public use. "Public use" is defined in the Act to include recreational use, such as hiking, biking, and equestrian trails. Congress further strengthened the railbanking policy by enacting the National Rails System Act, or Rails-to-Trails Act, in 1983. In Kansas, the result is land that would have reverted back to the adjacent landowner, apart from these Acts, may be held by a public or private entity for interim use as a recreational trail.

Until such time as the Rails-to-Trails Act can be repealed, Kansas Farm Bureau supports imposing certain conditions, focused on protecting the rights of the adjacent landowner, upon any entity converting a railroad right-of-way into a recreational trail. Our policy focuses specifically on railroad right-of-way conversion, as does Sub. HB 2711.

We appear today in support of Sub. HB 2711 and the conditions it places on all trail developers and operators, whether public or private. Like the bill, our policy advocates the imposition of several conditions to all trail developers and operators including: maintaining or constructing fences between the trail and adjoining landowners, controlling noxious weeds, providing access to easements, preventing trespassing through educating trail users and posting warning signs, controlling litter, maintaining the trail in a condition that does not create a fire hazard, and restricting use of motorized vehicles along the trail.

Many of these conditions are currently imposed on the Prairie Spirit rail-trail held by the Kansas Department of Wildlife and Parks. The 1995 Legislature, in approving an amendment to House Sub. for SB 385, directed the

Kansas Department of Wildlife and Parks to meet certain conditions relating to the development and operation of their Prairie Spirit Trail in eastern Kansas. The agency was required to maintain joint boundary fences, control noxious weeds, preserve existing landowner easements, educate trail users, control litter and ban motorized vehicles along the trail. These provisions were intended to address some concerns of adjacent landowners.

Earlier in 1995, Governor Graves recommended the funds for the Prairie Spirit Trail be restricted by proviso requiring approval of the trail's development by County Commissions in all affected counties. Farm Bureau members applauded the actions of both the Legislature and the Governor.

It is our understanding the KDWP did not object or experience serious problems with these conditions. In fact, a KDWP official reported to the Kansas Farm Bureau Natural and Environmental Resources Committee they were already implementing most of these provisos. We applaud the agency for their understanding of adjacent landowner concerns and their implementation of these "good neighbor" policies. This model also serves as an example that these conditions are reasonable, capable of being met, and not unduly burdensome on the trail operator.

KFB policy also supports the other conditions listed in Sub. HB 2711, not previously applied to rail-trail development in Kansas including: prohibiting hunting and trapping along the trail, providing law enforcement along the trail, and pre-approval based on specific trail descriptions by the local governing body affected.

Kansas Farm Bureau testified in favor of the original version of HB 2711 in the House Energy and Natural Resources Committee. Several opponents appeared at that hearing. A subcommittee, chaired by Rep. Freeborn, was formed and held seven meetings. The subcommittee reviewed each provision of the original bill, considered the comments and concerns of both proponents and opponents, and thoughtfully developed a substitute bill that we feel is a good and acceptable compromise.

In short, we believe all the conditions contained in Sub. HB 2711 are necessary and valid measures which strive to protect the property interests of landowners and the safety interests of trail users without unduly burdening rail-trail development or operation. Additionally, we believe Sub. HB 2711 is a "good neighbor" policy that will reduce much of the conflict between trail developers, trail users, and adjacent landowners.

Thank you!

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

RE: SUBSTITUTE BILL FOR H.B. 2711 - CONCERNING ABANDONED
RAILROAD TRAILS

March 15, 1996
Topeka, Kansas

Presented by:
Carolyn McGinn

Sedgwick County Farm Bureau Natural Environmental Resource Chairman

Chairman Salee and Members of the Committee:

In the summer of 1994 I became involved with the "Rails to Trails" battle that effected Sedgwick, Harvey and Reno counties. I could share many stories and experiences with you about this event, but due to time constraints I will only emphasize what I consider to be most important.

The "Ark Valley Rails to Trails" project was first introduced on the county government level by a few special interest groups. This thirty six mile diagonal rail track was located in the heart of prime agricultural land, much of it irrigated. After town meetings were held and a great deal of concern was raised about the safety and expense of the trail, the three county commissions voted against the trail project. Later the same groups asked the City of Wichita to become involved. The City of Wichita is located approximately fifteen miles southeast of this proposed trail. Despite the 98.5% opposition from the adjacent landowners, our state representatives, and many taxpayers, the City of Wichita ignored the concerns of those effected and voted to continue.

Since recreational trails take a great deal of tax dollars to develop, I feel adamant that the city and county governing bodies, if both are effected by the trail, should both be in favor of the project. In our situation once the City of Wichita decided to pursue this project the landowners were left behind without representation. As rural residents we were left holding the bag. By this I mean, concerns of fire safety, crime prevention, litter control and all the other responsibilities that go with a trail would have had to be paid for by the three counties that ~~did~~ opposed the trail in the first place. The tax payer the ultimate loser.

The most important point I would like for you to take from this testimony is to ensure individuals have representation when projects effect their livelihood and tax dollars. For trails to be successful, trail promoters need to work with adjacent residents and landowners. The National Rails Act does not address this need as it was developed only to the benefit of the railroads and the Rails to Trails Conservancy Group.

I appreciate this opportunity to relay my concerns and your thoughtful consideration of the substitute bill for H.B. 2711.

Senate Energy & Natural Res.
March 15, 1996
Attachment 2

**STATEMENT OF
WALTER PORTER
to the
SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
Senator Sallee, Chairman
with respect to
HB 2711
March 15, 1996**

Mr. Chairman and members of the Committee. I am Walter Porter and I am a farmer in northern Lyon County. I have been asked to speak for a group of my neighbors along the railroad and in the vicinity. We support House Bill 2711.

I call this a "Good Neighbor" bill. I have farmed and lived along the Missouri-Pacific Railroad for 60 years. They have always been a responsible party. They controlled noxious weeds, had an adjuster out immediately if they started a fire or if any cattle got out and were killed. The railroad was a good neighbor. We are just asking for the trail group to become a good neighbor.

We have always been able to cross the railroad to get to our land on the other side, with equipment or cattle. In fact, we could drive cattle along the railroad.

We feel the trail group needs to be bonded because the railroad was a responsible party and easily identifiable and accessible. We don't know the trail people. We are concerned the trail might become something everyone is part of, but no one is responsible.

We in agricultural have had to control our noxious weeds pursuant to the law. It would be impossible if there was a strip of land going down through our property that wasn't controlled for weeds. There is a problem in rural areas with trash being dumped. We don't want these trails becoming trash dump sites.

The railroad, which is now the trail, crosses many public roads. The County Commissioners need to be a third party to insure there is not a safety hazard at these crossings. We want people to be safe when they use the roads, as well as the trail.

There are a couple of items I would like to see added to the bill. These include taxes at the rate of the adjoining agricultural land. We pay taxes, the railroad paid taxes, and the trail group should help support schools and roads in our community.

We would also like the development of the trail to be on a shorter time schedule. However, I realize this was agreed to by all parties in the lengthy house subcommittee meeting hearings. Thank you for your time.

Senate Energy + Natural Res.
March 15, 1996
Attachment 3

BEFORE THE SENATE
ENERGY AND NATURAL RESOURCES COMMITTEE

Testimony in Opposition to
House Bill No. 2711

Charles H. Montange,
Counsel

on behalf of
Rails to Trails Conservancy

Mr. Chairman and Members of the Committee, good morning. My name is Charles H. Montange. I am appearing this morning on behalf of Rails to Trails Conservancy, a nation-wide non-profit organization, with some 70,000 members nation-wide.¹ RTC focusses on preserving otherwise to-be-abandoned railroad lines for possible future rail reactivation (a concept known as "railbanking") and for alternative public uses in the interim, particularly as trails. I am an attorney specializing in, among other things, railroad law, and I frequently serve as outside counsel to RTC, other private groups and public agencies interested in preserving railroad corridors, and to shippers and occasionally shortline railroads and public transit organizations. I appreciate this opportunity to testify on pending legislation directed at federally-railbanked rail trails in the State of Kansas.

I. Preserving Rail Corridors

At its peak, this Nation had some 300,000 miles of rail line in its built-rail system. Under 150,000 remain today, and abandonments continue at an average rate of about 2000 miles of track per year. When Congress streamlined the abandonment process commencing in the 1970's, there was general recognition that the rate of abandonment would increase, but that rail corridors were valuable national assets which should be preserved wherever this could be done without burdening the then-struggling rail industry, and its shippers. Congress realized that it was very difficult to preserve rail corridors once they were authorized for abandonment, and accordingly adopted numerous pieces of federal legislation to encourage preservation. The piece I will focus on, because it is the focus of the proposed Kansas legislation, is section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), signed into law

¹ Rails to Trails Conservancy's address is 1400--16th St., N.W., #300, Washington, D.C. 20036 and its telephone number is 202-797-5400. My address is 426 NW 162d St., Seattle, Washington 98177 and my telephone is 206-546-1936.

by President Reagan in 1983.

Section 8(d) requires the federal agency charged with rail abandonment regulation to "railbank" rail lines otherwise qualifying for abandonment whenever (a) a qualified private organization or a public body offers to assume the indicia of ownership, and (b) the railroad consents. The inducement to the "railbanker" to assume responsibility for the corridor, and to preserve it for future rail reactivation, is that the "railbanker" can use the corridor in the interim as a trail.

Section 8(d) of the Trails Act was upheld by a unanimous Supreme Court in Preseault v. ICC, 494 U.S. 1 (1990), against claims that it was beyond the power of Congress or constituted a taking of property without just compensation.

II. Rail Trail Experience

The general experience with trails, including rail trails, has been favorable. Trails not only serve as a key means to provide for non-motorized commuting, but also sustain a wide variety of recreational activities, including hiking, bicycling, walking, in-line skating, horseback riding, and so forth. Moreover, they are generally compatible with maintenance of wildlife habitat, and generally offer a clean, low cost, park-like experience. Rail trails, because of their easy grade, good sight distances, and broad curves, are ideal for the old and young, for handicapped use, and for families. Furthermore, if acquired early enough in the process, with bridges, culverts and roadbed intact, they not only are already assembled but also are relatively inexpensive to convert into trail use.²

Many States have adopted legislation to encourage the preservation of rail corridors, and the development of trails on those corridors. Additionally, under the "transportation enhancements" program of the current federal transportation funding law, federal funds are available for development of rail trails through state highway departments. Many States are employing these funds to develop trail systems in and for their

² I am supplying to the Committee the Executive Summaries from the following reports: (a) Evaluation of the Burke-Gilman Trail's Effect on Property Values and Crime (May 1987); (b) The Impact of Rail-Trails A Study of Users and Nearby Property Owners from Three Trails; and (c) Analysis of Economic Impacts of the North Central Rail-Trail. The three studies indicate that rail trails have a favorable economic impact, that trail opponents become supportive after the trail is developed, that the trails are generally better than the railroad, and that the trails are not associated with significant adverse impacts but are associated with benefits.

communities. Missouri is developing the 200 mile plus Katy Trail along the Missouri River; South Dakota is developing a 100 mile trail into the Black Hills; and Texas is working on several rail trail projects.

Notwithstanding the popularity of trails, notwithstanding the legislation designed to encourage preservation of lines at the federal level and in some states, and notwithstanding increased availability of funding, the task of preserving a rail corridor remains arduous. As a result, although roughly 150,000 miles of line has been abandoned in this country, only about 8000 miles has been preserved. The rail corridors which have been preserved are extraordinary assets: they include facilities like the 250-mile Cowboy Trail under development across north-central Nebraska, the Cedar Valley Nature Trail in Iowa, the John Wayne Trail in Washington State, the W&OD Trail in Virginia, and so on. These corridors are not just trail assets, but rail assets. For example, Burlington Northern is working with the State of Washington to return 100 miles of the State's cross-state rail trail to active service in support of the burgeoning rail commerce in the Puget Sound area.

III. Rail Trails in Kansas

Rails to Trails Conservancy endeavors to keep track of all existing rail trails. According to the Conservancy's data, there are only two rail trails open in the State of Kansas: a one miler in Lawrence, Kansas, and another 1.3 miles at Elkhart called Whistle Stop Park. The Lawrence trail is owned by the City, is used for both commuting and recreation, and the City tells me it enjoys wide support. The Whistle Stop Park likewise enjoys, according to the City's representative, virtual universal support; I was told to tell you that "Every community ought to have one." It is our understanding that Kansas Wildlife and Parks Department plans to open the first phase (roughly 18 miles) of the Ottawa to Iola (Prairie Spirit) trail, the only facility owned by the State, on or about March 30. Based on developed trails, and there does not appear to be a problem. Ordinarily one does not impose stringent regulations on activities which appear to be working.

A&K Salvage Company, through an alter ego shortline railroad, acquired a former Santa Fe line between Topeka and Parnell some years ago. After salvaging the line, A&K's railroad purported to do a "rail trail" with another A&K subsidiary, called "American Trails Association."³ A&K has done

³ There is a legitimate recreational and conservation organization known as "American Trails." American Trails has advised RTC that A&K is using the name American Trails Association for its subsidiary without the permission of

nothing to develop a trail on the premises, and appears unwilling to permit a legitimate trail group to take over the corridor for management purposes unless paid large sums of money. For a variety of reasons, Rails to Trails Conservancy does not regard this maneuver by A&K as a legitimate use of section 8(d) of the Trails Act. RTC has accordingly petitioned the Surface Transportation Board to investigate the situation, and to rescind the railbanking order as appropriate. The Board has indicated that where a "railbanking" entity fails to discharge its responsibilities under section 8(d) of the Trails Act, the Board will afford such a remedy. If any other shortline/salvage operators are trying such a maneuver in Kansas, a similar remedy is available. Kansas appears to be unique in that this is the only State in which the Conservancy has seen this kind of mis-use of the statute by salvage company/shortlines.

IV. The Kansas Legislation

As best we can judge based on what we have been told, the legislation adopted by the Kansas House is designed to prevent any further section 8(d) rail trails in the State of Kansas. The basic rationale which we have heretofore been offered for this position is that A&K is not properly managing or developing the Topeka to Parnell facility.

As a policy matter, this amounts to throwing the baby out with the bathwater. I am not here to defend A&K. As I have said, we have ourselves petitioned the Surface Transportation Board for relief against them, and we are prepared to seek similar relief against any other outfit which mis-uses the statute. But because a for-profit business (A&K Salvage) is not developing a corridor which it owns is not grounds to nix legitimate efforts by trail groups, or public agencies in the State, who are seeking to preserve corridors for future use, and to provide an interim recreational asset of broad value to all age groups. As the manager for the Whistle Stop Park in Eckart told me, "you all [the Committee] should come out here and see our trail before you do this."

As a legal matter, the proposed legislation is unique in targeting the federal railbanking statute, and propounding as a matter of state law a whole series of approval, planning, and implementation requirements. Some of the requirements are not only inconsistent, or impose inconsistent deadlines, but also serve no purpose or are counterproductive. The situation is a bit like a law stating that no one may own or use a car in Kansas unless (a) the car is a Mercedes, (b) a bond is posted assuring that it will forever be a Mercedes, and (c) the owner

American Trails.

and each user in fact has already owned the car long enough to have successfully passed driver's exams in that car in all counties in the State in which he or she may in the future wish to drive the car. In other words, aspects of the legislation are not only inconsistent but also so burdensome and duplicative as to be confiscatory of the railbanker's assets and resources.

Since the decision of the U.S. Supreme Court in Colorado v. United States, 271 U.S. 153 (1926), it has been clear that state or local laws purporting to regulate the rail abandonment process are preempted by the federal government's "exclusive and plenary" jurisdiction under the Supremacy Clause. More particularly, so long as a rail corridor remains under the jurisdiction of the Surface Transportation Board (as successor to the Interstate Commerce Commission), a state or local government cannot adopt laws or regulations which are inconsistent with conduct (either rail operation or rail abandonment) authorized by federal regulation. Under section 8(d) of the Trails Act, a rail corridor remains under the jurisdiction of the Surface Transportation Board for the entire period of railbanking/interim trail use. The intent of section 8(d) is totally defeated if a State purports to adopt restrictions on the use of section 8(d) which defeat and prevent its use. For example, use of the statute is conditioned upon first obtaining various approvals of local governments. The situation is the same as if a State adopted legislation designed to prevent federally-authorized railroads from operating in the State, or to regulate or to require abandonments in contravention of federal regulation. It follows that most of the requirements in the proposed legislation are preempted.

The problems with the legislation go beyond conflict with federal transportation jurisdiction, and preemption. Aspects of the legislation also raise questions under other portions of the Constitution. A Memorandum summarizing some of these issues is being supplied to the Committee.

The bottom line is that the legislation before this Committee is virtually unique. I am aware of no other State which has purported to target section 8(d) rail trails for such extraordinary requirements. The legislation, if adopted, would invite litigation, for of all trails, section 8(d) rail trails enjoy the most protection from discriminatory state legislation.

Given the serious flaws in the legislation, we recommend instead that the Committee work with us to develop non-discriminatory legislation which addresses real problems without throwing all the babies out with the bathwater. At the very least, the Committee should ask for an opinion of the State's Attorney General on the constitutional issues.

On behalf of Rails to Trails Conservancy, we would welcome an opportunity to work with the Committee to address real problems, but in a fashion compatible with recognizing the public benefits associated with preserving rail corridor. In the meantime, the Conservancy is concerned with the situation with respect to the A&K line in Kansas, and has taken appropriate action to raise that issue at the Surface Transportation Board.

Again on behalf of the Conservancy, I appreciate this opportunity to testify, and I would be pleased to answer any questions.

Prepared for hearing scheduled for 15 March 1996

Attachments (to some copies of testimony)

- Att. A -- rail trail studies
- Att. B -- open rail trails in Kansas
- Att. C -- legal memorandum

Appendix A

EVALUATION OF THE

BURKE-GILMAN TRAIL'S

EFFECT ON

PROPERTY VALUES AND CRIME

Executive Summary



SEATTLE ENGINEERING DEPARTMENT

OFFICE FOR PLANNING

MAY 1987

I. EXECUTIVE SUMMARY

PURPOSE

The purpose of this study was to determine what effect, if any, the Burke Gilman Trail has had on property values and crime rates of property owners near and adjacent to the trail. The need for the study became apparent when property owners in a different area of the city expressed concern over the development of a new trail project on the basis that it might reduce their property values, increase crime, and generally reduce the quality of life. These concerns are similar to concerns raised by property owners who bought their homes prior to the construction of the Burke-Gilman Trail.

TRAIL PROFILE

The Burke Gilman Trail is a 12.1 mile (9.85 miles are in Seattle) multi-purpose trail that follows an abandoned railroad right-of-way. Most of the trail passes through residential neighborhoods. In Seattle, there are 152 single-family homes and 607 condominiums immediately adjacent to the trail, and 320 single-family homes within one block of the trail. The trail also passes through an industrial area, several neighborhood commercial areas, the University of Washington, and links six different parks. The trail was constructed in 1978 and has about three quarters of a million users per year.

METHODOLOGY

Data was collected via telephone by interviewing residents near and adjacent to the trail, real estate agents who buy and sell homes near the trail, and police officers who patrol neighborhoods adjacent to the trail. Residents were asked questions regarding: their decision to buy their home; what effect they thought the trail would have on selling their home; what problems, if any, they have had with break-ins and vandalism by trail users; and how the trail has affected their overall quality of life. Real estate agents were asked similar questions on how the trail affects the selling price of homes along the trail. In addition, police officers were asked questions regarding trail users breaking into and vandalizing homes. A bi-weekly survey of newspaper real estate advertisements and real estate magazines was also conducted to determine whether homes were being advertised as being near or on the Burke-Gilman Trail.

An attempt was made to compare the selling prices and assessed values of homes along the trail with homes in comparable neighborhoods. However, due to the many variables that determine the value of a home, it was impossible to isolate the trail as a determinant of increased or decreased home value using this method.

CONCLUSIONS/RECOMMENDATIONS:

Property near but not immediately adjacent to the Burke-Gilman Trail is significantly easier to sell and, according to real estate agents, sells for an

average of six percent more as a result of its proximity to the trail. Property immediately adjacent to the trail, however, is only slightly easier to sell, and sells for zero to 1/2 of one percent more. Residents who bought their homes after the trail was opened are most likely to view the trail as a positive factor that increases the value of their home. Longtime residents who bought their homes prior to the opening of the trail are generally less likely to view the trail as an economic asset. Real estate advertisements that promote properties as being on or near the trail tend to be from the companies that regularly sell homes near the trail. In other words, people who have recently been involved in the real estate market near the trail are more likely to have experienced the economic assets of the trail.

Homes immediately adjacent to the trail did not experience an increase in burglaries and vandalism as a result of the trail. In the eight years the trail has been open, there has been an average of two incidences of vandalism or break-ins per year where a trail user was thought to be involved. This is well below the neighborhood average, which would expect about five incidents per year, given the number of homes along the trail. Police officers interviewed stated that there was not a greater incidence of burglaries and vandalism of homes along the trail. They attributed that fact to the absence of motor vehicles. The police officers said that there would be no significant trail problems as long as parking lots were away from the trail and bollards prevented motor vehicle use.

Not a single resident surveyed felt the trail should be closed. Less than three percent said there were any problems associated with the trail that were serious enough to cause them to consider moving. Almost two-thirds of the residents felt the trail increased the quality of life in the neighborhood. Two of the residents surveyed indicated that they had been leaders in the group opposing the trail, and that they now believe the trail is the best thing that has happened to the neighborhood.

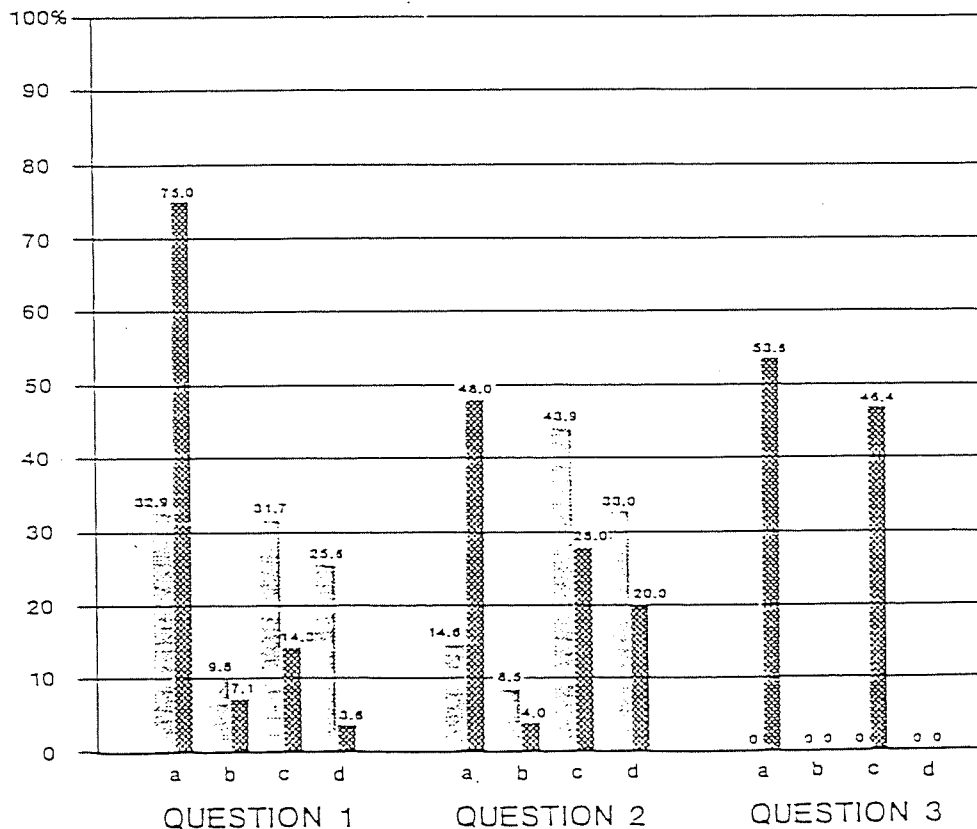
One point of concern regarding the trail must be mentioned. Although not included in the survey, thirteen percent of those surveyed brought up the problem of user conflicts (i.e., speeding bicyclists) on the trail. To some extent it is a problem of success. The trail has twice as many users as had been originally forecasted. Solving this problem may require trail design changes, educating users, and enforcing trail regulations.

SURVEY OF RESIDENTS WHO OWN SINGLE FAMILY HOMES ADJACENT TO TRAIL

1. If you were to sell your home today, do you think being near the Burke-Gilman Trail would
 - a. make the home easier to sell
 - b. make the home more difficult to sell
 - c. have no effect on selling the home
 - d. do not know

2. If you were to sell your home today, do you think being near the Burke-Gilman Trail would
 - a. make the home sell for more
 - b. make the home sell for less
 - c. have no effect on the selling price of the home
 - d. do not know

3. When you bought your home, did the Burke-Gilman Trail
 - a. positively influence your decision to buy your home
 - b. cause some misgivings about buying your home
 - c. have no effect on your decision to buy your home
 - d. owned home prior to construction of trail



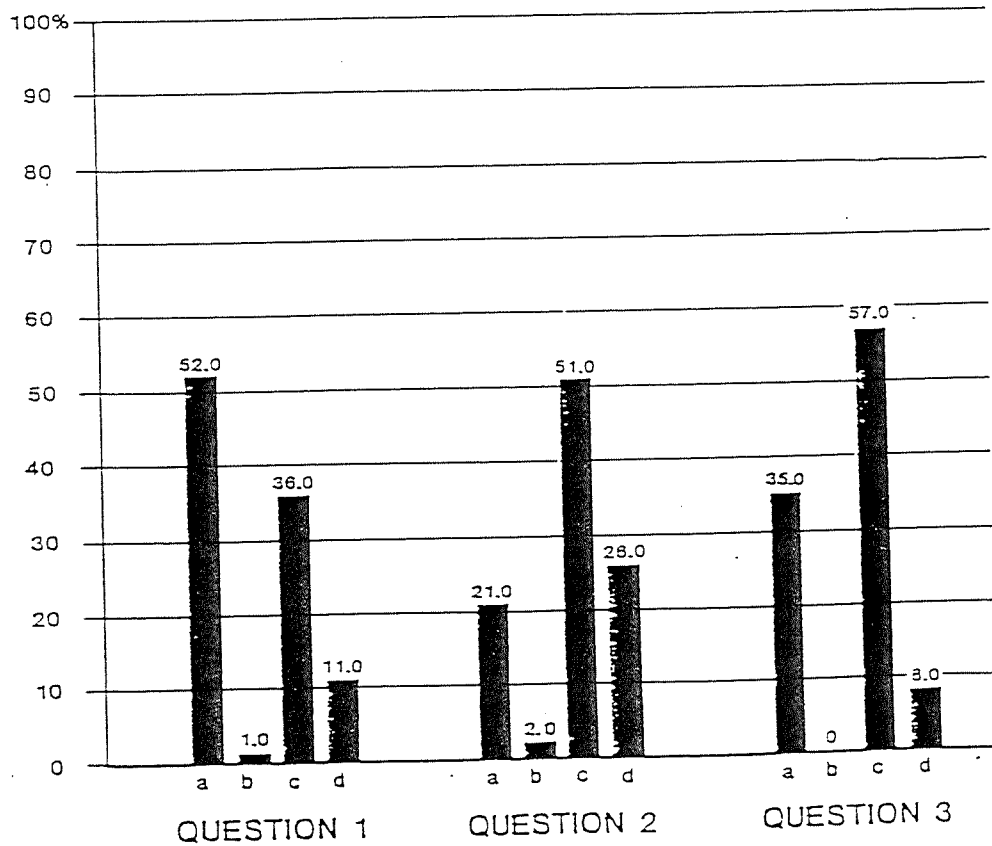
Key:
 — RESIDENTS ADJACENT TO TRAIL WHO BOUGHT PROPERTY PRIOR TO TIME TRAIL WAS OPENED.
 ▨ RESIDENTS ADJACENT TO TRAIL WHO BOUGHT PROPERTY AFTER TRAIL WAS OPENED.

SURVEY OF CONDOMINIUMS ADJACENT TO TRAIL

1. If you were to sell your condominium today, do you think being near the Burke-Gilman Trail would
 - a. make the condo easier to sell
 - b. make the condo more difficult to sell
 - c. have no effect on selling the condo
 - d. do not know

2. If you were to sell your condominium today, do you think being near the Burke-Gilman Trail would
 - a. make the condo sell for more
 - b. make the condo sell for less
 - c. have no effect on the selling price of the condo
 - d. do not know

3. When you bought your condominium, did the Burke-Gilman Trail
 - a. positively influence your decision to buy your condo
 - b. cause some misgivings about buying your condo
 - c. have no effect on your decision to buy your condo
 - d. owned condo prior to construction of trail

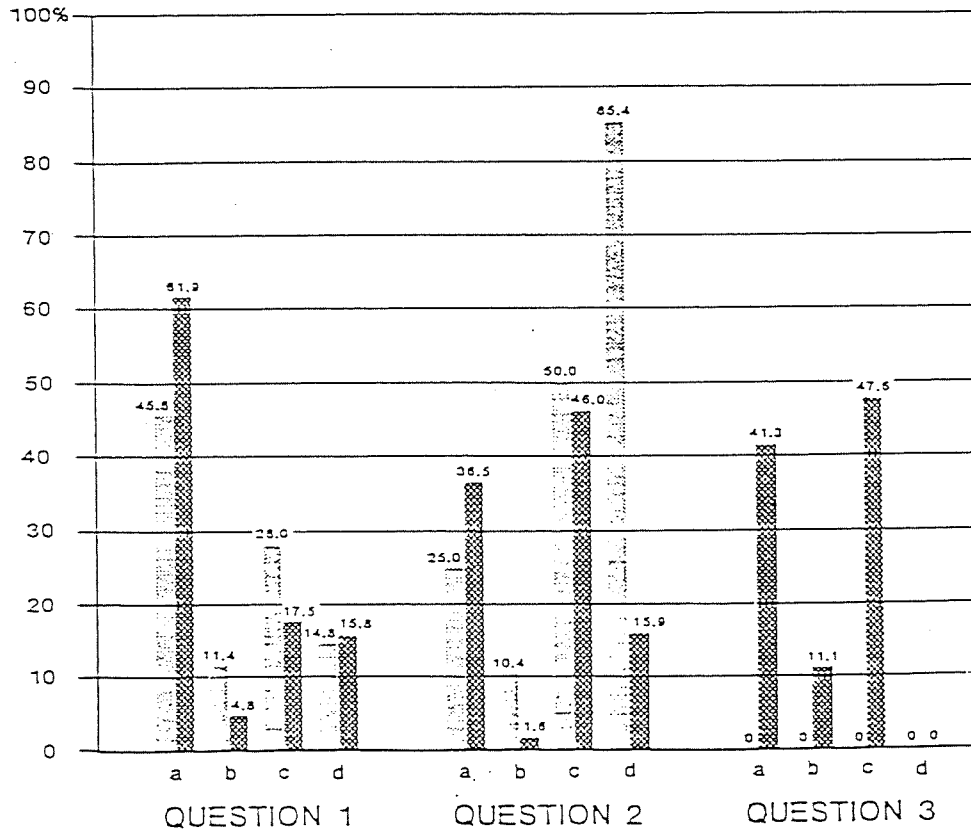


SURVEY OF RESIDENTS WHO OWN SINGLE FAMILY HOMES WITHIN ONE BLOCK OF TRAIL

1. If you were to sell your home today, do you think being near the Burke-Gilman Trail would
 - a. make the home easier to sell
 - b. make the home more difficult to sell
 - c. have no effect on selling the home
 - d. do not know

2. If you were to sell your home today, do you think being near the Burke-Gilman Trail would
 - a. make the home sell for more
 - b. make the home sell for less
 - c. have no effect on the selling price of the home
 - d. do not know

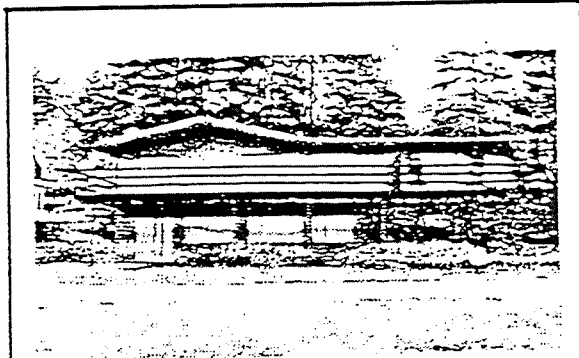
3. When you bought your home, did the Burke-Gilman Trail
 - a. positively influence your decision to buy your home
 - b. cause some misgivings about buying your home
 - c. have no effect on your decision to buy your home
 - d. owned home prior to construction of trail



Key:
 [Dotted Pattern] RESIDENTS ADJACENT TO TRAIL WHO BOUGHT PROPERTY PRIOR TO TIME TRAIL WAS OPENED.
 [Cross-hatched Pattern] RESIDENTS ADJACENT TO TRAIL WHO BOUGHT PROPERTY AFTER TRAIL WAS OPENED.

SAMPLE ADVERTISEMENTS
(See Appendix for Additional Ads.)

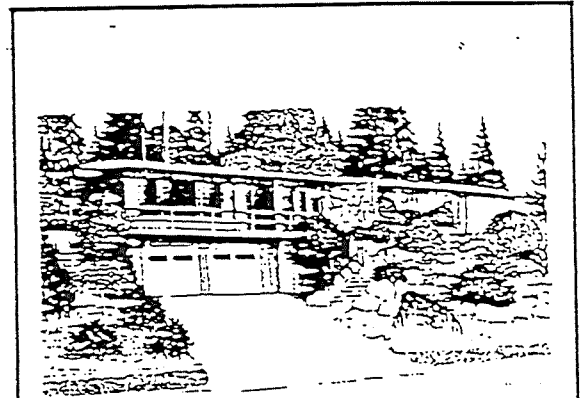
HOME ALONG TRAIL



CEDAR PARK **\$139,950**
Close in N Seattle location adjoining the Burke-Gilman Trail with full Lake Washington views. Ideal family or shared living w/4+ bdrms, 3 baths, 2 frpls, rec rm & full length entertainment deck. Call Jon Beahm, 527-5250.

Date: Mar. 28 - April 10
Source: FORUM

HOME NEAR TRAIL



VALHALLA **\$108,500**
View of Wayne Golf Course. Outstanding value. Lovely neighborhood. Family room off kitchen plus rec room. Community pool. Convenient to Burke-Gilman Trail. Sonia Bartel, 488-3503 or 527-1777.

Date: Mar. 28 - April 10
Source: FORUM

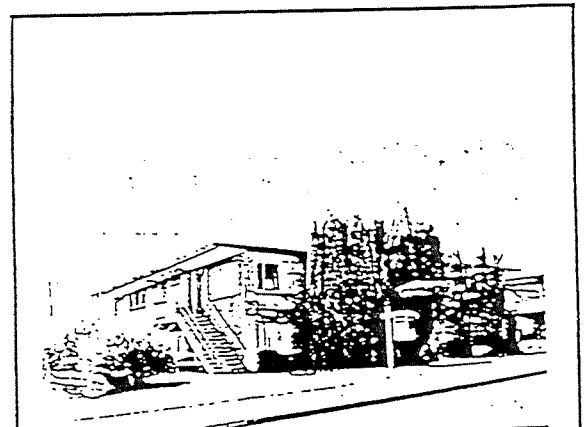
CONDOMINIUM ALONG TRAIL



FAIRWAY ESTATES **\$165,000**
Professionally decorated unit with view overlooking Lake Washington & Cascades. Wet bar & fireplace for elegant entertaining. Sauna, pool, rec room & Gilman trail at the door. Laurelnurst Office, 525-6571.

Date: July 8 - July 18
Source: FORUM

APARTMENT NEAR TRAIL



EIGHT UNIT APARTMENT near UW, BURKE GILMAN TRAIL parking in rear. Updated and always rented, waiting list, prime rents & neighborhood. NEVER VACANT. \$239,950. 443-1046

Date: June 6 - June 19
Source: HOMES & LAND OF SEATTLE & SNOHOMISH COUNTY

SURVEY OF REAL ESTATE AGENTS

1. If a home is immediately adjacent to the Burke-Gilman Trail, the trail will
 - a. make the home easier to sell
 - b. make the home more difficult to sell
 - c. have no effect on selling the home

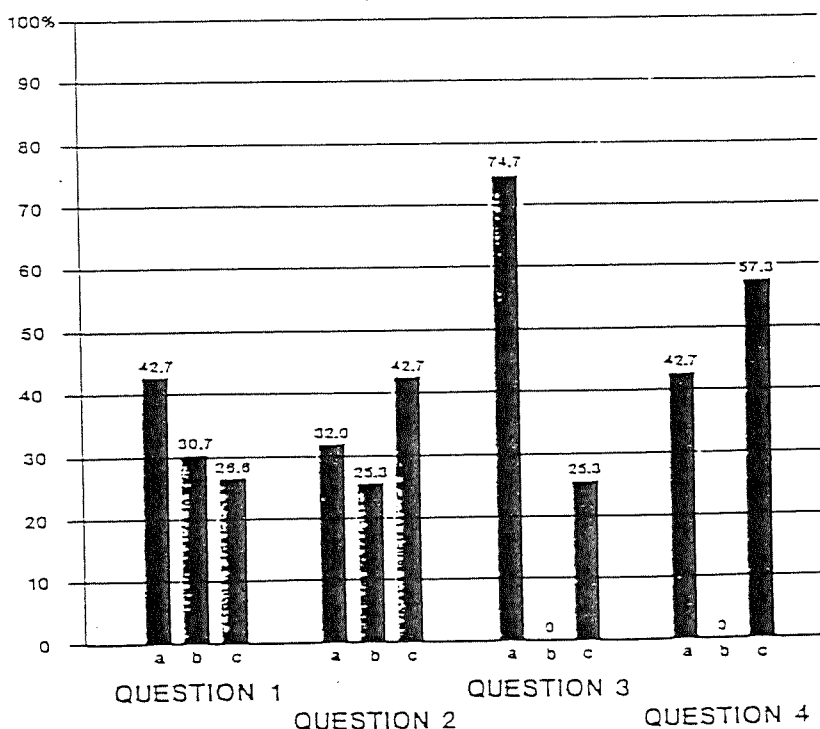
2. If a home is immediately adjacent to the Burke-Gilman Trail, the trail will
 - a. make the home sell for more
 - b. make the home sell for less
 - c. have no effect on the selling price of the home

How much more or less? (want %) (see page ___) Average = +0.47%

3. If a home is within two blocks of the Burke-Gilman Trail, but not immediately adjacent to the trail, the trail will
 - a. make the home easier to sell
 - b. make the home more difficult to sell
 - c. have no effect on selling the home

4. If a home is within two blocks of the Burke-Gilman Trail, but not immediately adjacent to the trail, the trail will
 - a. make the home sell for more
 - b. make the home sell for less
 - c. have no effect on the selling price of the home

How much more or less? (want %) (see page ___) Average = +5.2%



SURVEY OF RESIDENTS WHO OWN SINGLE FAMILY HOMES ADJACENT TO TRAIL

Question #1: To the best of your knowledge

- a. Has a trail user ever broken into your home? Yes No
- b. (if yes) How often? (see page ____)
- c. What was stolen? What other damage occurred? (see page ____)

Results:

Out of a total of 110 residents surveyed, five of the residents said that, most probably, a trail user had broken into their home at one time during the 8 years the trail has been open. Two of the residents indicated that their home had been broken into twice. Hence, there has been a total of 7 break-ins during the 8 years the trail has been open. This is 4.5 percent of the residents surveyed.

Question #2: To the best of your knowledge

- a. Has a trail user ever vandalized your property? Yes No
- b. (if yes) How often? (see page ____)
- c. What damage occurred? (see page ____)

Results:

Out of a total of 110 residents surveyed, four of the residents said that, most probably, a trail user had vandalized their property at one time during the 8 years the trail has been open. One of the residents indicated that their property had been vandalized twice. Hence, there has been a total of 5 incidents of vandalism during the eight years the trail has been open. Only 3.5% of the residents indicated that their property had been vandalized.

SURVEY OF RESIDENTS WHO OWN SINGLE FAMILY HOMES ADJACENT TO TRAIL

3. Have you ever made any efforts to

a. Keep trail users off your property? Yes No

b. (if yes) How did you do it? (see page _____)

c. Has it been successful? Yes No

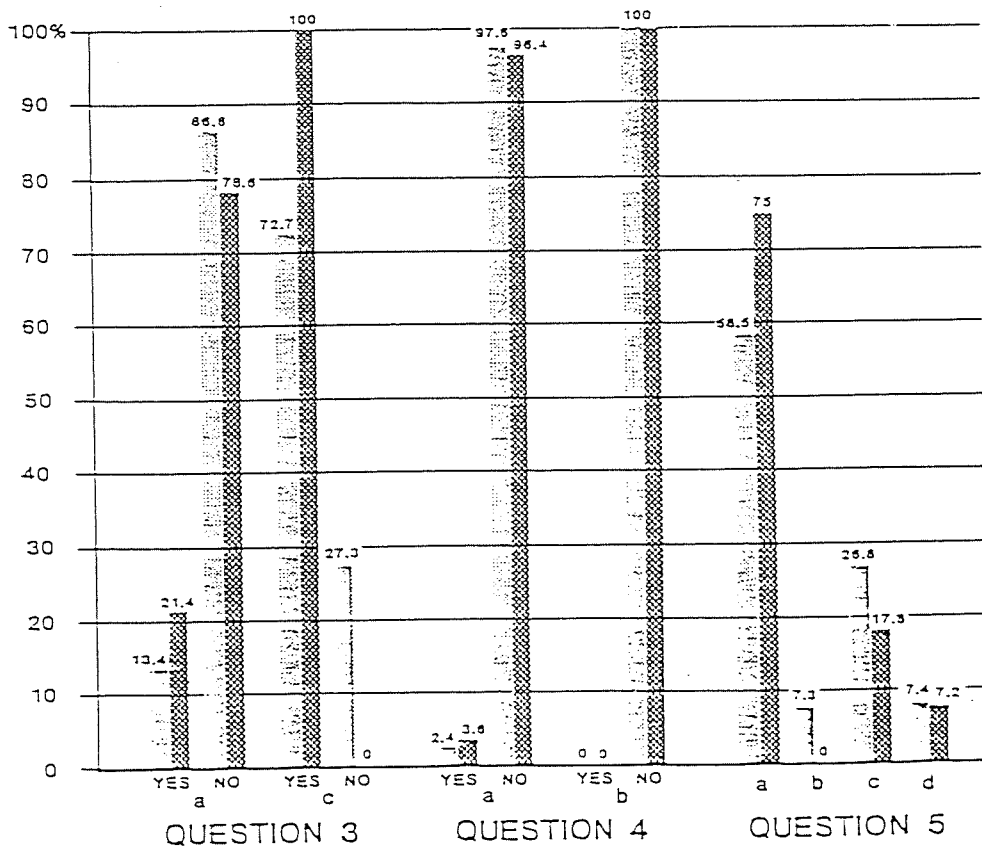
4. Are there are problems caused by the trail that

a. are serious enough to cause you to consider moving? Yes No
(if yes) What are the problems? (see page _____)

b. are serious enough that you would like to see the trail closed? Yes No

5. In general, do you feel that the presence of the Burke-Gilman Trail has

- a. increased the quality of life in the neighborhood
- b. decreased the quality of life in the neighborhood
- c. had no effect on the quality of life in the neighborhood
- d. do not know

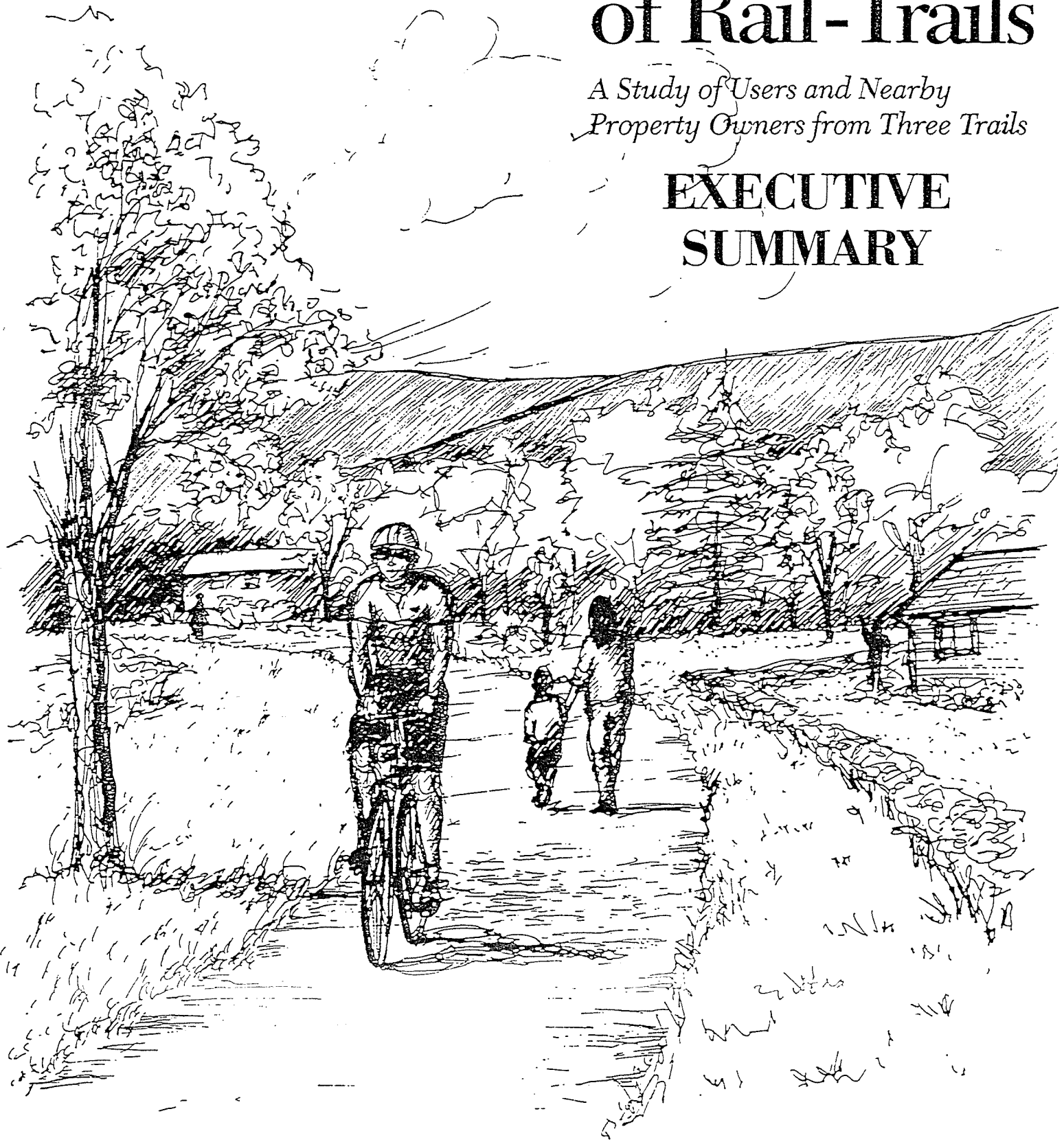


Key:
 ——— RESIDENTS ADJACENT TO TRAIL WHO BOUGHT PROPERTY PRIOR TO TIME TRAIL WAS OPENED.
 ■■■ RESIDENTS ADJACENT TO TRAIL WHO BOUGHT PROPERTY AFTER TRAIL WAS OPENED.

The Impacts of Rail-Trails

*A Study of Users and Nearby
Property Owners from Three Trails*

EXECUTIVE SUMMARY



Conducted by:

U.S. Department of the Interior
National Park Service
Rivers & Trails Conservation Program
1992

In cooperation with:

The Pennsylvania
State University

4-18

11/11

THE IMPACTS OF RAIL-TRAILS:
A STUDY OF THE USERS AND PROPERTY OWNERS
FROM THREE TRAILS

BY

RIVERS, TRAILS, AND CONSERVATION ASSISTANCE PROGRAM
NATIONAL PARK SERVICE
WASHINGTON, D.C.

IN COOPERATION WITH

LEISURE STUDIES PROGRAM
SCHOOL OF HOTEL, RESTAURANT AND RECREATION MANAGEMENT
THE PENNSYLVANIA STATE UNIVERSITY
(COOPERATIVE AGREEMENT #CA-0765-9-8001)

FEBRUARY 1992

AUTHORS:

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ELIZABETH PORTER

EXECUTIVE SUMMARY

Background and Methods

This *Impacts of Rail-Trails* study was the first extensive study to examine the benefits and impacts of rail-trails and the first, to our knowledge, to systematically examine both the trail users and nearby property owners of the same trails. It was a cooperative effort of the National Park Service and Penn State University carried out in 1990 and 1991. Its purpose was to furnish information to assist in the planning, development, and management of rail-trails, public recreation trails constructed on the beds of unused railroads rights-of-way. The study's objectives were to: 1) Explore the benefits of rail-trails to their surrounding communities and measure the total direct economic impact of trail use; 2) Examine what effects rail-trails have on adjacent and nearby property values; 3) Determine the types and extent of trail-related problems, if any, experienced by trail neighbors; and 4) Develop a profile of rail-trail users. This report summarizes the study's methods and findings.

A sample of three diverse rail-trails from across the U.S. was studied: The Heritage Trail, a 26-mile trail surfaced in crushed limestone which traverses rural farmland in eastern Iowa; the St. Marks Trail, a 16-mile paved trail beginning in the outskirts of Tallahassee, Florida and passing through small communities and forests nearly to the Gulf of Mexico; and the Lafayette/Moraga Trail, a 7.6-mile paved trail 25 miles east of San Francisco, California which travels almost exclusively through developed suburban areas. At the time of the study, the Heritage Trail was eight years old, the St. Marks two, and the Lafayette/Moraga was fourteen years old.

Users were systematically surveyed and counted on each trail from March, 1990 through February, 1991 and were then sent follow-up

mail surveys. A sample of residential landowners owning property immediately adjacent to the trails and a sample of those owning property within one-quarter mile of the trails (one-half mile in Iowa) were also surveyed by mail, and real estate professionals in communities along the trails were interviewed by phone. Usable mail surveys were obtained from 1,705 trail users and 663 property owners, and interviews with 71 realtors and appraisers were conducted. Major findings from the analysis of these responses and counts are summarized at the conclusion of this executive summary.

Study Findings

Trail Users and Use

- 1) Demographically, the samples of rail-trail users were much like the populations of the communities through which the trails passed.
- 2) The study trails were quite heavily used, with most users living nearby and visiting frequently. This pattern was most pronounced on the suburban Lafayette/Moraga Trail.
- 3) The study did not find a "typical" mix of activities that might be expected on rail-trails. Although bicycling and walking were the most common activities on all the study trails, they occurred in very different proportions on each.
- 4) Having no motorized vehicles allowed was the most desirable trail characteristic expressed by the users of each trail. Other important characteristics were: natural surroundings, quiet settings, safe road crossings, smooth trail surfaces, and good maintenance.

5) Users reported no serious complaints with any of the trails. Insufficient drinking water and restroom facilities were the biggest concerns overall, with rough trail surfaces and reckless behavior of other users reported as problems on the Lafayette/Moraga Trail.

Economic Benefits of Rail-Trails

1) Use of the sample trails generated significant levels of economic activity. These economic benefits were from two major sources: total trip-related expenditures and additional expenditures made by users on durable goods related to their trail activities.

2) Users spent an average of \$9.21, \$11.02, and \$3.97 per person per day as a result of their trail visits to the Heritage, St. Marks, and Lafayette/Moraga Trails, respectively. This resulted in a total annual economic impact of over \$1.2 million in each case. Expenditures on durable goods generated an additional \$130 to \$250 per user annually depending on the trail.

3) The amount of "new money" brought into the local trail county(s) by trail visitors from outside the county(s) was \$630,000, \$400,000 and \$294,000 annually for the Heritage, St. Marks, and Lafayette/Moraga Trails, respectively.

4) Restaurant and auto-related expenditures were the largest categories of trip-related expenses and visitors that spent at least one night in the local area were the biggest spenders. Equipment (such as bicycles) was the largest category of durable expenditure.

Landowner and Property Characteristics

1) Property size and distance from homes to trail varied from trail to trail as expected with the largest properties and distances between homes and the trail occurring along the rural Heritage

Trail and the smallest properties and those closest to the trail occurring along the suburban Lafayette/Moraga. Relatedly, it was far more likely for a landowner's property to be severed by the Heritage Trail than by the other two.

2) The vast majority of landowners were trail users and visited the trails frequently.

Problems Experienced by Landowners

1) Overall, trail neighbors had experienced relatively few problems as a result of the trails during the past twelve months, but the types and frequencies of these problems varied from trail to trail.

2) The problems reported by the most landowners were: unleashed and roaming pets, illegal motor vehicle use, and litter on or near their property. The problems that were most likely to have increased for adjacent owners since the opening of the trail were: noise from the trail, loss of privacy, and illegal motor vehicle use.

3) The majority of owners reported that there had been no increase in problems since the trails had been established, that living near the trails was better than they had expected it to be, and that living near the trails was better than living near the unused railroad lines before the trails were constructed. Although owners along the Heritage Trail were the least positive and those along the Lafayette/Moraga the most positive, the majority sampled along each trail was satisfied with having the trail as a neighbor.

Rail-Trails' Effects on Property Values

1) Landowners along all three trails reported that their proximity to the trails had not adversely affected the desirability or values of their properties, and along the suburban Lafayette/Moraga Trail, the majority of owners felt the

presence of the trail would make their properties sell more easily and at increased values.

2) Of those who purchased property along the trails after the trails had been constructed, the majority reported that the trails either had no effect on the property's appeal or added to its appeal.

3) The vast majority of real estate professionals interviewed felt the trails had no negative effect on property sales and no effect on property values adjacent to or near the trails. However, those who felt the trails increased property values outnumbered those reporting decreased values. This positive effect was most pronounced on the Lafayette/Moraga Trail and for nearby, as opposed to adjacent, property.

Other Benefits of Rail-Trails

1) Trail users and landowners alike reported that the trails benefited their communities in many ways. Health and fitness and recreation opportunities were considered to be the most important benefits of the trails by the landowners. The trail users felt the trails were most important in providing health and fitness, aesthetic beauty, and undeveloped open space.

Study Conclusions and Implications

1) Rail-trails can provide a wide range of benefits to users, local landowners, and trail communities. They are not single use, single benefit resources. Residents and visitors enjoy the benefits of trail use, aesthetic beauty, protected open space, and in some instances higher property resale values, while local communities enjoy bolstered economies and increased community pride among other benefits. These benefits should be presented as a package when discussing the merits of rail-trails with the diverse constituencies affected by proposed trails.

2) Levels of economic impact varied considerably across the three study trails. This was due principally to the fact that the Lafayette/Moraga Trail was used almost exclusively for short trips by nearby residents while the other two trails attracted more visitors from beyond the local neighborhoods. If economic benefits are an important community objective, marketing efforts should be developed aimed at attracting out-of-town visitors and getting many of them to make overnight stays.

3) The study rail-trails were found to have a dedicated core of users who visited frequently and were committed to "their" trails. This finding represents an opportunity for managers of existing trails and planners of new trails to tap into a potentially rich source of trail supporters and volunteers for assistance on a number of appropriate planning and management activities.

4) Although negative aspects of living adjacent to rail-trails were reported by some landowners, the rates of occurrence and seriousness of problems were relatively low and advantages of living near the trails were reported as well. This finding should be encouraging to trail planners and advocates. While all existing and potential problems need to be identified and addressed quickly, trail planners and advocates should not be timid about presenting the positive impacts of rail-trails to landowners along the proposed trails and putting them in contact with their peers along existing trails.

Summary and Comparison of the Study Trails

	Heritage	St. Mark's	Lafayette/Moraga
<i>Description</i>			
<ul style="list-style-type: none"> • Length, miles • Surface • Year established • Nearest Metropolitan Area • Population • Distance from trail • Fee charged • Operating agency • Trail landscape 	26 Compacted limestone 1982 Dubuque, IA 62,000 2 miles \$5/year or \$1/visit Dubuque County Conservation Board Open farmland to rocky, wooded river valley	16 Asphalt paved 1988 Tallahassee, FL 82,000 Begins at city outskirts \$0 Florida Department of Natural Resources Small towns and undeveloped forest land	7.6 Asphalt paved 1976 "East Bay" Metropolitan Area 2 million in the metropolitan area \$0 East Bay Regional Park District Developed suburban areas
<i>Trail User Survey</i>			
<ul style="list-style-type: none"> • Survey response (%) • Usable surveys • Calculated yearly (visits) • Major uses (%) <ul style="list-style-type: none"> - Bicycling - Walking - Jogging • Male/Female (%) • Mean age (years) • Income, under \$40,000 (%) • College graduates (%) • Race, white (%) • Reporting a disability (%) • Trail visits in last year (median) • Miles from home (median) • % who lived 20 miles or more from trail • Time spent on trail (average minutes) 	89 329 135,000 65 29 3 56/44 46 55 40 98 7 7 7 31 150	71 600 170,000 81 9 4 51/49 38 56 66 93 7 10 8 18 141	83 776 400,000 20 63 12 43/57 50 21 68 94 7 100 1.5 4 68
<i>Adjacent/Nearby Landowner Survey</i>			
<ul style="list-style-type: none"> • Survey response (%) • Usable surveys • Male/female (%) • Mean age (years) • Average distance from home to trail (feet) • Land owned (average acres) • % with properties severed by trail • Trail used by household member in last year (%) • Days used by household in last year (average) 	75 107 54/46 50 2434 101 20 88 47	58 226 41/59 53 1822 6 2 76 67	71 330 56/44 54 890 0.5 0 99 141
<i>Trail Benefits</i>			
<ul style="list-style-type: none"> • Highest benefits perceived by trail users • Highest benefits perceived by landowners 	<ul style="list-style-type: none"> • Health and fitness • Aesthetic beauty • Preserving open space • Community pride • Health and fitness • Recreational opportunities 	<ul style="list-style-type: none"> • Health and fitness • Aesthetic beauty • Preserving open space • Recreation opportunities • Health and fitness • Recreation opportunities 	<ul style="list-style-type: none"> • Health and fitness • Aesthetic beauty • Preserving open space • Community pride • Health and fitness • Recreation opportunities

Summary and Comparison of the Study Trails (Continued)

	Heritage	St. Mark's	Lafayette/Moraga
<p><i>Trail User Perceptions</i></p> <ul style="list-style-type: none"> • Most important trail characteristics • Trail characteristics perceived as problems 	<ul style="list-style-type: none"> • No motorized vehicles • Good maintenance • Natural surroundings • Lack of drinking water • Lack of restrooms • Rough trail surface 	<ul style="list-style-type: none"> • No motorized vehicles • Good maintenance • Natural surroundings • Lack of drinking water • Lack of restrooms • Lack of services 	<ul style="list-style-type: none"> • No motorized vehicles • Natural surroundings • Quiet settings • Lack of drinking water • Rough trail surface • Reckless behavior of users • Lack of restrooms
<p><i>Landowner Perceptions</i></p> <ul style="list-style-type: none"> • Landowner's personal support for trail when proposed <ul style="list-style-type: none"> - Very supportive (%) - Very opposed (%) • Attitude about living near trail now compared to initial reaction <ul style="list-style-type: none"> - Much better (%) - Much worse (%) • Current satisfaction with trail <ul style="list-style-type: none"> - Very satisfied (%) - Very dissatisfied (%) • Most commonly reported problems (% of all owners reporting) • Most frequently occurring problems (average times in last year for all owners) • Problems that have decreased or not changed since before trail opened (% of adjacent owners reporting improvement or no change) • Problems most likely to have increased since before trail opened (% of adjacent owners reporting more of a problem now) 	<ul style="list-style-type: none"> 17 39 27 2 27 15 • Illegal motor vehicle use (39) • Cars parked on/near property (24) • Litter (21) • Illegal motor vehicle use (2.1) • Litter (2.1) • Cars parked on/near property (2.0) • Dog manure (100) • Burglary (94) • Animals harassed (94) • Users ask to use phone, bathroom, etc. (94) • Drainage problems (94) • Loss of privacy (38) • Illegal motor vehicle use (32) • Cars parked on/near property (25) • Noise from trail (24) 	<ul style="list-style-type: none"> 47 7 33 5 47 11 • Illegal motor vehicle use (39) • Litter (21) • Loitering on/near property (20) • Cars parked on/near property (5.1) • Loss of privacy (3.9) • Illegal motor vehicle use (3.0) • Vandalism (95) • Burglary (95) • Rude users (94) • Users ask to use phone, bathroom, etc. (93) • Illegal motor vehicle use (35) • Loss of privacy (23) • Noise from trail (21) • Litter (19) 	<ul style="list-style-type: none"> 37 7 28 1 54 6 • Unleashed/roaming pets (43) • Noise from trail (27) • Litter (27) • Dog manure on/near property (8.8) • Cars parked on/near property (6.5) • Noise from trail (6.0) • Animals harassed (96) • Burglary (96) • Users ask to use phone, bathroom, etc. (96) • Trespassing (95) • Illegal motor vehicle use (95) • Noise from trail (36) • Loitering on/near property (30) • Loss of privacy (25) • Cars parked on/near property (17)
<p><i>Economic Impact</i></p> <ul style="list-style-type: none"> • Average trip expenditure (\$ per person per day) • Total trips/year • Total annual expenditures by users 	<ul style="list-style-type: none"> \$9.21 135,000 \$1,243,350 	<ul style="list-style-type: none"> \$11.02 170,000 \$1,873,400 	<ul style="list-style-type: none"> \$3.97 400,000 \$1,588,000

Summary and Comparison of the Study Trails (Continued)

	Heritage	St. Mark's	Lafayette/Moraga
Additional Trip Expenditure Information			
• Accommodations used by overnight visitors			
- Hotel/Motel (%)	53	28	0
- Friends/Relatives (%)	24	39	100
- Campground (%)	15	14	0
• Major direct expenditures made by all visitors (average \$/person/day)			
- Restaurants	\$2.99	\$3.94	\$0.78
- Gas and oil	2.08	3.72	1.33
- Lodging	1.46	0.44	0.28
• % of direct expenditures made in county(s) trail is located in	66	42	41
• Major direct expenditures made in county by visitors to county (\$/person/day)			
- Restaurants	\$5.21	\$4.70	\$1.34
- Gas and oil	2.14	2.42	0.82
- Lodging	2.56	1.98	0.00
- Retail purchases	1.36	2.27	3.37
• Average total expenditures made in trail county(s) by visitors to county (\$/person/day)	\$13.22	\$15.18	\$6.86
Expenditures on Durable Goods			
• Average amount spent in last year within the county that was influenced by trail existence (\$)			
- Equipment—bikes, etc.	\$ 68.67	\$127.05	\$41.25
- Accessories	21.88	34.87	19.75
- Clothing	21.25	28.25	48.80
- Other	7.67	5.35	3.69
- Total spent in county	\$119.47	\$195.52	\$113.49
• Total amount spent in last year that was influenced by trail existence (average per person)	\$173.99	\$250.64	\$132.69
Effect on Real Estate			
• Adjacent owner's opinion about effect of trail on resale value			
- No effect (%)	73	74	44
- Increased value (%)	14	16	53
• Real estate professionals surveyed	20	25	26
• Realtors' and appraisers' conclusion about effect of the trail on adjacent residential property			
- No effect (%)	82	80	52
- Increased value (%)	12	20	24

Persons to Contact for More Information

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P.O. Box 37127
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Washington, D.C. 20013-7127
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Heritage Trail:

Robert Walton, Executive Director
Dubuque County Conservation Board
13768 Swiss Valley Road
Peosta, IA 52068
(319) 556-6745

St. Marks Trail:

Mary Anne Koos, State Trails Coordinator
Division of Recreation and Parks
Bureau of Local Recreation Services
3900 Commonwealth Boulevard
Mail Station 585
Tallahassee, FL 32399-3000
(904) 487-4784

Lafayette/Moraga Trail:

Steve Fiala, Trails Coordinator Specialist
East Bay Regional Parks District
2950 Peralta Oaks Court
P.O. Box 5381
Oakland, CA 94605-0381
(510) 635-0135, x2602

EXECUTIVE SUMMARY:

America's concern for the environment and enhanced understanding of our recreational needs has brought about a recent evolution in open space preservation. This evolution, or "revolution" in land conservation/recreation planning has created a broad interest in the development of greenways. This report addresses this evolution at three distinct levels:

- First, a national perspective on greenways is provided by Edward T. McMahon, Director of the American Greenways Program.
- Second, a synopsis of greenway initiatives in the state of Maryland is provided by Ms. Teresa Moore, Executive Director, Maryland Greenways Commission.
- Lastly, an analysis of the Northern Central Rail Trail Greenway in Baltimore County, Maryland conducted by PKF Consulting reveals the economic and qualitative impacts of a new greenway resource.

Based upon our analysis, we are of the opinion that the Northern Central Rail Trail (NCRT) provides a number of substantial economic and qualitative benefits to the people of Maryland. Perhaps the most significant economic finding of this study is that while the 1993 budget to provide the Trail to the public was \$191,893, the direct economic inputs to the State via tax revenue alone were \$303,750. Additionally, we estimate the Trail supports 264 jobs statewide. The value of goods purchased because of the NCRT for 1993 is estimated to total in excess of \$3,380,000.

The attractiveness and demand for use of the Trail can best be illustrated by the tremendous growth in the Trail's use, from under 10,000 visitors per annum in 1984 to over 450,000 in 1993 - equating to a compound annual attendance growth rate of 53 percent per year. Coinciding with this expression of interest were a number of key survey findings, such as:

- 93.72 percent of the survey respondents felt the Northern Central Rail Trail is a good use of State funds.
- Two-thirds of respondents liked greenways better than traditional, more confined

parks.

- Over 95 percent of respondents view the Trail as an asset to their community.
- Less than 2 percent of respondents felt unsafe on the Trail.
- Nearly two-thirds of respondents felt the trail enhances nearby property values.

The NCRT is clearly recognized by residents as an asset for the region, especially the local community. As the survey findings demonstrate, nearly 100 percent of the Trail's users come from Baltimore County, and as a percentage of Trail users nearly 80 percent use the Trail at least once per week.

While some greenways have diverse attendance segments and can significantly increase tourism, others like the (NCRT) are used primarily as a passive recreation resource (walking, biking) primarily by local residents. Not only did the surveys indicate this, but the visitor logs from Monkton Station from 1989-1993 all support this finding. The reason for the NCRT's use primarily by residents can be attributed to both its location (in a suburban to rural bedroom market for Baltimore), it's relatively new presence in the market (10 years), limited signage to the resource from major travel corridors, and lack of commercial development along its length.

Consequently, there are relatively few establishments to capture tourism dollars. However, this market is beginning to grow as is shown by the emergence of tourist related businesses at Monkton Station and elsewhere along the trail. The NCRT's recognition as a local resource is a remarkable accomplishment. Before it was redeveloped as a greenway, the rail corridor was a "magnet" for illegal dumping, vandalism, and illicit uses by adolescents and others. Now, as a prized local resource, the NCRT is "policed" by residents and problems along the corridor have decreased dramatically.

With regard to user expenditures detailed in the economic impacts section of this report, Trail users who had purchased goods for use on the Trail spent an average of \$203 in 1993. Similarly, users who purchased soft goods (food etc.) before or after using the Trail spent an average of \$6.30 per visit.

To understand the Trail's success one must recognize the forces that have led to its popularity. Two general areas of interest lead: safety and passive recreation. The interest in safety for walkers, runners and especially bicyclists (who together make up almost 98 percent of the Trail's users) reflects a lack of other safe areas to congregate. To that end, the NCRT fills a critical gap for the surrounding region. Tied into this need are some basic trends:

- 1) An aging population - in six more years, at the turn of the century over 40 percent of the U.S. population will be over 60 years of age - and already Baltimore County has the second oldest population per capita of any county in the U.S. (Dade County, Florida is number one.)
- 2) More bicycles are sold in the United States than are automobiles. Nearly all respondents mentioned there are relatively few places near their homes where bicyclists can safely ride.
- 3) The most popular recreation activity in the United States is walking; over 100 million Americans participate in this activity 2 to 3 times per week.
- 4) Current land development and housing patterns remain focused outside urban core areas and center on rural and suburban areas. These areas provide relatively inexpensive land, good travel corridors, better schools, support facilities (shopping areas) and less crime than more urban settings.

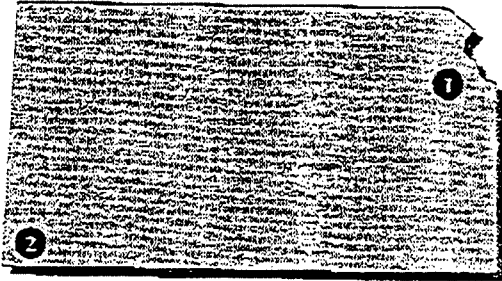
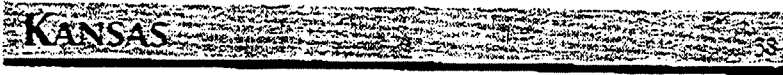
Knowing these facts it is no small wonder why the Trail is so popular. That popularity is not limited to Maryland; presently the section of the former Northern Central rail corridor that runs from the Maryland/Pennsylvania state line north toward York, Pennsylvania is also being redeveloped as a trail corridor. As the rail corridor was redeveloped as a greenway a new life has been given to the historic hamlets along its route, and a new generation of businesses are beginning to establish a relationship with the Trail. Even some smaller, local businesses such as bike shops, with sales of just over \$1,000,000 per year estimate that one quarter of their business comes from users of the Northern Central.

Worth noting are ongoing negotiations between the Maryland Department of Natural

Resources (DNR) and MCI Telecommunications Company. At the time of this writing MCI is offering DNR \$200,000 to be used for improvements to the trail as specified by DNR (\$26,316 per mile used). MCI is making this offer in agreement for a non-exclusive perpetual license agreement to use 7.6 miles of the NCRT corridor right-of-way for fiber optics routing. These ongoing discussions (near completion) emphasize another intrinsic value long touted for greenways - as infrastructure corridors.

Appendix B

Open Rail-Trails in Kansas



1 Lawrence Rail-Trail
 Endpoints: Lawrence
 Location: Douglas County
 Length: 1.0 mile
 Surface: Crushed stone and original ballast



Contact:
 Fred DeVicor
 Director
 Lawrence Parks and Recreation Department
 P.O. Box 708
 Lawrence, KS 66044-0708
 (913)832-3000

2 Whistle Stop Park
 Endpoints: Elkhart
 Location: Morton County
 Length: 1.3 miles of 1.8-mile trail is on abandoned rail corridor
 Surface: Asphalt with parallel grass treadway



Contact:
 Ed Johnson, Chairman
 Whistle Stop Park Committee
 Drawer 70
 Elkhart, KS 67950
 (316)667-2402

19

Appendix C

LAW OFFICES OF
ANDREA C. FERSTER

1400 SIXTEENTH STREET, N.W., SUITE 300
WASHINGTON, D.C. 20036

Andrea C. Ferster
Laura D. Middleton*
* also admitted in Maryland

(202) 797-5427

M E M O R A N D U M

TO: Marianne Fowler
FROM: Andrea Ferster *AF*
DATE: March 5, 1996
SUBJECT: Analysis of Proposed Kansas Rail-Trail Legislation

You asked me to review the proposed substitute for House Bill No. 2711, now pending before the Kansas legislature, to determine whether any of its provisions are constitutionally flawed. The discussion that follows is intended as a summary highlighting only some of the defects affecting the validity of the proposed legislation.

Overview of legislation

Section 8(d) of the National Trails System Act -- the federal railbanking law -- is part and parcel of the "exclusive and plenary" jurisdiction of the Interstate Commerce Commission (ICC) over railroad abandonments.¹ Section 8(d) provides that rail lines remain under federal jurisdiction for possible future rail reactivation (railbanking") during the entire period of "interim use" as a trail, and that such interim trail use "shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes." 16 U.S.C. § 1247(d).

Section 8(d) serves two related purposes: First, it preserves rail corridor intact for possible future rail uses without burdening the railroads with related expenses by requiring the interim trail manager "to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use." *Id.* Second, it provides federal protection for the interim trail manager who assumes this liability, while "assist[ing] recreation users by providing opportunities for trail use on an interim basis." U.S. Code Cong. & Admin. News 1983, p. 119. If an interim trail manager does not uphold its end of the bargain by assuming "full responsibility" for management of the right-of-way, a remedy is available in the form of petitioning the STB to "de-railbank" the trail on the grounds that the trail manager is

¹ The ICC has now been abolished, and its responsibilities with respect to railroad abandonments, including railbanking, have been assumed by the newly-created Surface Transportation Board (STB). ICC Termination Act, 109 Stat. 803 (1995).

not fulfilling its basic responsibilities under Section 8(d).
See 49 C.F.R. § 1129(d)(2).

The proposed Kansas legislation is clearly designed to impede this federal regulatory mechanism for rail corridor preservation. The bill imposes a host of requirements applicable only to federally railbanked "rail-trails." These requirements include costly prior notification requirements, time deadlines for trail development, and requirements for prior approval of trail plans by local governments, with associated deadlines. No such requirements are placed on railroads generally, on other trails, or even on non-railbanked "rail-trails." Neither the bill nor the supplemental notes to the substitute bill articulate any rationale for singling out federally-railbanked trails for regulatory purposes.

In lieu of the federal remedy of petitioning the STB to "de-railbank" the corridor, the penalty for failing to comply with the bill's deadlines and approval requirements governing preparation and implementation of trail plans is draconian: a trail manager that is unable to complete a trail plan, secure the necessary governmental approvals, or complete trail development within the statutory time frames will be forever barred from using or developing the corridor as a trail. The statutory time frame for completing and securing government approval of a trail plan -- 180 days from the issuance of an order certifying the corridor as eligible for federal railbanking -- is so constricted so as to preclude most governmental bodies, which are subject to public hearing and notice rules, from considering and taking action on these plans.

Ironically, these constricted time frames are likely to produce trail plans that are hastily prepared, without any public participation or involvement. Likewise, the time frames would preclude governmental approval of such plans except on an emergency basis, which would allow for only cursory review and input. Thus, these requirements would not serve to promote greater trail manager responsibility or better trail plans. Instead, the result of these restrictions will certainly be to impose virtually insuperable obstacles on the development or use of federally-railbanked corridors in Kansas. Very few trail managers would agree to assume responsibility for a corridor under Section 8(d) in the first instance under those circumstances.

By rendering it virtually impossible to preserve a rail corridor for future rail reactivation in Kansas, the bill suffers from the following constitutional flaws. First, the bill conflicts with and frustrates federal regulation of rail abandonment, in violation of the Supremacy Clause. Second, the bill will operate to take property from interim trail managers without just compensation, in violation of the Fifth Amendment.

Finally, the burdens imposed on railbanking operations will constitute an unconstitutional interference with interstate commerce.

1. The Supremacy Clause.

The Supremacy Clause of the U.S. Constitution invalidates state laws that "interfere with or are contrary to, the laws of congress. . ." Gibbons v. Orden, 9 What 1, 211 (1824). Local law is preempted by federal regulation whenever the "challenged state statute 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Perez v. Campbell, 402 U.S. 637, 649 (1971) (citations omitted). It is well-established that state or local laws and regulations purporting to regulate railroad abandonments are preempted by the federal government's "exclusive and plenary" jurisdiction under the Supremacy Clause. Colorado v. United States, 271 U.S. 153 (1926); Chicago & N.W. Transp. v. Kalo Brick & Tile, 450 U.S. 311, 321 (1981).

While the ICC has determined that its regulatory authority under Section 8(d) does not preempt the authority of local governments to address trail management issues such as litter and weed control, the Kansas bill goes far beyond simply setting forth trail management responsibilities. The bill's onerous approval requirements and rigid deadlines for preparation of project plans are designed to create obstacles to the development and use of federally-railbanked trails rather than achieve more responsible stewardship by interim trail managers. The Kansas bill therefore reaches beyond the regulatory authority reserved to local authorities, and stands as an obstacle toward the achievement of Congress' objective "to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use." 16 U.S.C. § 1247(d).

Likewise, the bill's adjacent property notification requirements imposed by the bill directly conflict with the ICC/STB regulatory mechanism for implementing Section 8(d). The bill requires that trail managers give personal notification to all adjacent property owners of the issuance of order authorizing railbanking negotiations between a trail manager and a railroad, even though the proposed trail manager, at that point, has no property interest in the corridor and no authority to develop or use it for a trail. This provision is simply a thinly-disguised effort to force an entity who has invoked the federal railbanking law to provide personal notice to adjacent property owners.

The ICC considered and expressly rejected a petition to require trail managers to provide this notice, stating that such a provision would be "a time-consuming, expensive and burdensome task" which "would be inconsistent with the purpose of the Trails

Act." Rail Abandonments--Use of Rights-of-Way as Trails--
Supplemental Trails Act Procedures, Ex Parte No. 274 (Sub-No.
13), served May 26, 1989. See National Association of
Reversionary Property Owners v. ICC, ___ F.3d ___ (D.C. Cir.
1995) (Table). Because the ICC has specifically determined that
this notice would interfere with its regulatory authority under
Section 8(d), state regulations mandating such notice directly
conflicts with this federal policy.

In sum, the bill as a whole has both the purpose and effect
of frustrating interim trail use of federally-railbanked
corridors, and precluding trail use altogether under most
circumstances. As a result, it directly interferes with the
Surface Transportation Board's authority to regulate rail
abandonments under the Revised Interstate Commerce Act and to
preserve corridors for future rail use under Section 8(d).²

2. Fifth Amendment to the U.S. Constitution

As noted above, the provisions of the bill apply only to
trails that are railbanked under Section 8(d) of the Trails Act,
16 U.S.C. § 1247(d). Section 8(d) has been upheld by the U.S.
Supreme Court as a constitutional exercise of congressional
authority, stating "Congress apparently believed that every line
is a potentially valuable national asset that merits preservation
even if no future rail use for it is currently foreseeable."
Preseault v. I.C.C., 494 U.S. 1, 19 (1990). The specific
mechanism by which Congress chose to achieve this objective is
through the transfer of the railroad property to a trail manager
for interim use as a recreational trail.

However, this bill will make it virtually impossible to use
or develop a corridor that has been railbanked pursuant to
Section 8(d) of the Trails Act. As a result of these provisions,
it will be virtually impossible for a trail manager, after
purchasing a railbanked corridor from the railroad under Section
8(d), to develop or use of property interests transferred
pursuant to Section 8(d) -- even where trail use is the only
reasonable, beneficial use of the property. Governmental
regulation that denies a property owner reasonable, beneficial
use of property, thereby frustrating investment-backed
expectations, effects a taking of property without just
compensation. Penn Central Transp. Co. v. City of New York, 438
U.S. 104 (1978). Should a trail manager be precluded from
developing or using the corridor as a trail by operation of this

² Indeed, the bill's narrow focus on only federally
railbanked corridors is so blatantly discriminatory and without
any rationale, even pretextual, for limiting its scope to such
corridors, that it presents a prima facie violation of the equal
protection clause. See Morey v. Doud, 354 U.S. 457 (1957).

statute, it will effect a taking, making the state liable for damages.

3. Commerce Clause

The provisions of the bill would also interfere with interstate commerce by essentially barring within the state of Kansas efforts to preserve railroad corridors for future interstate freight rail transportation and for present interstate transportation as a trail. For example, the proposed legislation would likely prevent any use or development of the Flint Hills Trail, which is potentially part of the coast-to-coast American Discovery Trail.

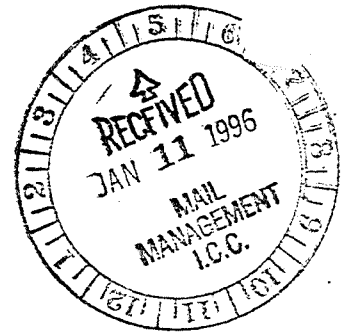
Art. I § 8, cl. 3 of the U.S. Constitution provides that "Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." Under the "dormant" or "negative" Commerce Clause, a state may not regulate or tax in a way that would materially burden or discriminate against interstate commerce. State legislation limiting railroad operations within the state has been invalidated as an unconstitutional interference with interstate commerce. See Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945) (Arizona law prohibiting the operation of trains having more than 14 passenger cars or 70 freight cars violated Commerce Clause).

Moreover, legislation may unconstitutionally interfere with interstate commerce even where it is disguised as a regulatory measure. The Supreme Court, while recognizing the power of states to regulate the use of its public highways, has held that such regulations can unconstitutionally burden interstate commerce where the delay and burden to interstate operations outweighs any regulatory benefits. See Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959) (Illinois statute requiring trucks operating in that state to be equipped with contoured rear-fender mudguards placed an unconstitutional burden on interstate commerce).

Such is the case here. The Kansas legislation explicitly targets only one type of trail -- trails that have been railbanked with the ICC in order to provide future interstate rail service and present interstate trail transportation. Moreover, the regulation goes far beyond imposing reasonable regulations on the management and maintenance of trails, and instead will operate to bar any use or development of these corridors as trails in most instances. Under those circumstances, there is little likelihood that there will be any railbanking within the state of Kansas, and the ability of railroads to preserve their routes through Kansas will be impaired. The legislation is therefore an unconstitutional interference with interstate commerce.

BEFORE THE SURFACE TRANSPORTATION BOARD

T&P Railway -- Exemption --)
Shawnee, Jefferson & Atkinson) AB-381 (Sub-no. 1X)
Counties, KS)



Motion to Reopen Proceeding
to Investigate Propriety of Revoking
Notice of Interim Trail Use

Rails to Trails Conservancy (RTC) hereby moves to reopen the above-captioned proceeding for the Surface Transportation Board (STB) to investigate the propriety of revoking the Notice of Interim Trail Use (NITU) issued in the proceeding.

Interest of RTC

RTC is a nation-wide non-profit corporation with over 60,000 members. RTC is dedicated to the preservation of otherwise to-be-abandoned rail corridors for possible future rail reactivation ("railbanking"), and for other compatible public purposes, including public trails. To this end, RTC has participated in many proceedings before STB's predecessor, the Interstate Commerce Commission (ICC), to secure Notices of Interim Trail Use (NITU's) to permit the preservation of rail lines under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d). This motion is unique for RTC, but, consonant with RTC's interest in preserving railroad corridors for public use, RTC is vitally interested in the integrity of STB/ICC procedures implementing section 8(d) of the Trails Act. RTC strongly believes that section 8(d) should not be abused, but instead should be employed in bona fide efforts to preserve lines for future rail use and interim trail use.

Summary of Facts

The rail corridor in question¹ is an excellent candidate for railbanking and interim trail use.² However, the trail managing entity, American Trails Association, Inc. (ATA),³ ATA is not a private "trail group," land conservancy, recreational organization, or transit body. Instead, ATA is a corporate entity which is owned, controlled, or otherwise the alter ego of a for-profit salvage company: A&K Salvage. The officers of ATA appear to be the officers or employees of A&K Salvage, who themselves are also officers or employees of T&P Railroad.

The combined actions of A&K, T&P, and ATA (hereinafter collectively referred to as A&K) are not consistent with bona fide railbanking and interim trail use within the meaning of section 8(d) of the Trails Act. For example, A&K has removed the ballast to the extent also of destroying large segments of

¹ MP 47 + 3390 feet to MP 6 + 3182 feet, Topeka to Parnell, in Shawnee, Jefferson and Atchison Counties, KS.

² The Atchison Chamber of Commerce, the Glacial Hills Resource Conservation and Development Council, and other bona fide entities have expressed interest in preserving the line in question as a rail trail. Both the Kansas Department of Parks and Wildlife and the Kansas Department of Transportation unsuccessfully sought to railbank the corridor with one or more of A&K Salvage Company's various alter egos (T and P Railway, or ATA). The Kansas State Historic Preservation Officer supported preservation of the corridor.

³ RTC understands that ATA was formerly named KC Railway, Inc., but changed its name to American Trails Association, Inc., on March 24, 1994. So far as RTC is aware, ATA is neither a tax exempt nor a non-profit organization. Ironically, there is a bona fide D.C. non-profit corporation named "American Trails." A&K's alter ego American Trails Association, Inc., has usurped the name of this bona fide group, seeding considerable confusion in the trails community. See letter from Stuart Macdonald, attached.

the roadbed. This renders development of a trail much more expensive than ordinary "salvage" treatment. It is tantamount to taking out track and ties but still claiming one is operating trains on the line. Moreover, A&K has removed all cross ties from a 1300 foot bridge on the corridor, essentially destroying the bridge for trail purposes, again rendering trail conversion vastly more difficult and expensive. Finally, A&K has revealed no plans to develop the corridor for trail use to the State of Kansas or to RTC, or to open the corridor to the public for trail use. To the contrary, as noted above, A&K is taking actions incompatible with trail use. A&K basically appears to be attempting to hold the corridor intact primarily to extract compensation for interests in the property, such as revenue from a public utility (Western Resources) with certain transmission lines located on the corridor. These actions suggest that A&K is operating not as a trail group intent on preserving and developing a trail, but as a land company seeking to maximize profit.

RTC does not find grounds for objection solely because ATA/A&K is not developing a trail. Many times rail corridors are railbanked, but development is delayed pending completion of environmental compliance requirements, or planning and engineering studies, or because other park and trail projects have a priority in the budget process. However, here ATA/A&K have taken actions which actually will increase the cost of developing a trail, and which render interim use of the facility

next to impossible; in particular, ATA/A&K have caused the roadbed to be largely destroyed, and have rendered at least one key bridge largely unusable.

Similarly, RTC does not find grounds for an objection solely because a railroad (even a salvage company railroad) seeks to maximize profit, and RTC certainly wishes to encourage railroads to hold corridors intact pending negotiations with trail groups for railbanking and interim trail use. However, the ordinary method by which a railroad preserves a corridor until a bona fide buyer for trail use/railbanking emerges is not to consummate the abandonment authorization by, among other things, tearing up the corridor. Here A&K is seeking to avoid this approach by "doing" a Notice of Interim Trail Use (NITU) with itself, rather than with a bona fide outside party. Combined with the fact that A&K has no plans or intent to develop a trail itself on the corridor, what has happened below is the very epitome of a subterfuge or ruse.

Another problem is posed by the events below. The Kansas State Historic Preservation Officer (SHPO) in the course of the proceeding below effectively made a conditional determination of no adverse effect on historic resources for purposes of section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, on the understanding that the line would be preserved through donation of the corridor by T&P for trail use/railbanking by the Kansas Wildlife and Parks Department, and through preservation of the bridges. See Exhibit B. No such donation occurred, and

actions detrimental to at least one bridge have occurred. See Exhibit C. The proceeding should be reopened to determine the effects of abandonment on historic resources in the corridor as required under section 106 in the absence of railbanking/trail use.

ICC Authority to Reopen

In its brief in chief in NARPO v. ICC, D.C. Cir. No. 94-1581 (brief dated June 1995), ICC explained that

after a Trails Act request is made by a trail group, landowners can submit evidence that a trail offer is a subterfuge (i.e., that the right-of-way will not in fact be used as a trail), or that statutory conditions will not be met [Authorities deleted.] If a trail use arrangement is successfully negotiated and a landowner or other interested party presents evidence to call into question the continued application of the Trails Act, the ICC will reopen the abandonment proceeding to afford a trail group the opportunity to show that it continues to meet [the requirements]. If the ICC determines that the trail group does not..., the ... NITU may be revoked, and the line declared fully abandoned...." ICC Brief at 28-29.⁴

Because of RTC's interest in the integrity of section 8(d), RTC moves to reopen the above captioned proceeding in accordance with the procedure described above for purposes of investigating the propriety of revocation of the NITU based on the new evidence that the alleged interim trail/railbanking agreement between T&P and ATA is a subterfuge, in that A&K-T&P-ATA is not a trail group in any sense of the word, and that the referenced companies not only have no intent to develop and operate a trail

⁴ The procedures insofar as they pertain to reopening correspond to this agency's approach in connection with adverse rail abandonment applications. See Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994).

but also have taken actions inconsistent with same.

Argument

16 U.S.C. § 1247(d) provides a means by which a "qualified private organization" may preserve a rail corridor by reaching an agreement with the railroad seeking abandonment authority for interim use of the rail corridor as a trail, so long as such interim trail use is subject to possible future rail reactivation. The alleged agreement between T&P and ATA apparently is not of record, but if such an agreement exists, it appears to be a ruse and subterfuge which does not truly contemplate development or operation of a trail by ATA. It thus fails to meet the statutory formulae for railbanking set forth in 16 U.S.C. § 1247(d). What appears to have occurred is that A&K Salvage has arranged for ATA to act as T&P's marketing agent, with the additional benefit of preserving a revenue stream (utility use revenues) for A&K (a/k/a T&P). In the meantime, A&K, T&P and ATA have rendered the cost of developing a trail much more expensive by destroying portions of the roadbed as well as key portions of a large bridge.

In the situation here, a salvage company, purporting to "railbank" a corridor with itself, has destroyed key trail-related structures, and has no plans to develop or to operate a trail on the corridor. It is unfair to the bona fide trail community, as well as to adjacent landowners, and a perversion of the intent of section 8(d) of the Trails Act, to permit a salvage company to so abuse the interim trail use/railbanking

statute.

It is RTC's understanding that a Mr. Daryl Becker, representing himself as a landowner whose farm is traversed by the line,⁵ petitioned this agency on or about April 27, 1994, to "rescind" the Notice of Interim Trail Use which the Commission issued in this proceeding and to dismiss the "trail use request of American Trails Association, Inc." Becker's primary ground for reopening was that, according to Mr. Becker, ICC had lost jurisdiction over the corridor prior to railbanking.⁶ Mr. Becker also questioned whether ATA and T&P had met the statutory standards for railbanking under section 8(d). ICC denied Mr. Becker's petition by a decision served July 20, 1995. Mr. Becker has sought review of this order in Becker v. ICC, D. C.Cir. No. 95-1481 (petition for review filed Sept. 18, 1995).

Although there are some similarities, the basis of RTC's motion to reopen is different that relied upon by Mr. Becker. Mr. Becker concentrated on the corporate connection between ATA, T&P, and A&K. Although this is relevant, RTC's motion is also based on the new evidence of over a year of adverse experience with A&K and ATA, in which attempts by bona fide groups to railbank the corridor have been rejected, and in which the roadbed has been in significant part destroyed.

In rejecting the Becker petition to rescind, the

⁵ Mr. Becker may own some farm land but he actually is president of the Meriden State Bank in Meriden, Kansas.

⁶ RTC does not agree that ICC lost jurisdiction over the corridor for purposes of issuing a NITU.

Commission observed that issuance of a NITU or CITU is a ministerial act, and it does not review the "'qualifications' of a particular trail proponent...." Dec. served July 20, 1995, at p. 5. Here, however, ATA is not even a "trail proponent," but is part of an apparent scheme by a salvage company to accomplish ends for which trail plans or development are -- at best-- irrelevant.

In its brief in NARPO v. ICC, supra, the ICC, following its practice with respect to so-called adverse abandonment petitions, indicated that where a railbanking agreement is a subterfuge, a landowner or "other interested party" could seek reopening, and the Commission would require the "trail group" to show that its arrangement in fact was bona fide. RTC is an "other interested party" presenting indications that the alleged trail manager (ATA) is a ruse, and the whole arrangement between T&P and ATA is a subterfuge. Indeed, ATA is not even a "trail group," but simply a holding company for A&K. However, it remains appropriate to extend ATA (A&K) the courtesy of an opportunity to show some kind of reason why this alleged interim trail use agreement is not the clear ruse it appears to the national trails community.

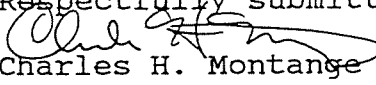
The destructive actions practiced by A&K and its affiliates on the corridor also indicate that the matter should be reopened in order to complete the section 106 process. The Kansas SHPO's conditional "no adverse effect" finding was contingent upon the corridor being turned over to Kansas Wildlife and Parks

for preservation as a trail. See Exhibit B attached. The corridor was not so turned over. The corridor's current manager -- ATA -- acting the opposite of a trail manager, has taken actions adverse to preservation of the corridor as a trail. These actions are threatening historic resources on the corridor, and section 106 should be applied before there is nothing left to protect.

Conclusion

In accordance with the procedures the ICC indicated to the D.C. Circuit in this agency's brief in NARPO v. ICC, supra, this agency should reopen this proceeding, and require ATA and T&P to show cause why the NITU covering this corridor should not be revoked. Additionally, this agency should reopen the proceeding to allow compliance with section 106 of the National Historic Preservation Act in light of the fact that the contingency upon which the Kansas SHPO based the finding of "no adverse effect" on historic resources -- namely, that the corridor and bridges would be donated to Kansas Wildlife and Parks Department -- has not occurred. To the contrary, the ostensible "trail manager" --ATA -- which is not a trail manager at all, appears to be destroying the roadbed and acting adversely to at least some key bridges.

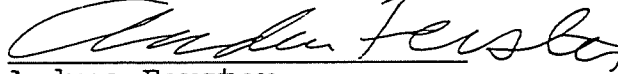
Respectfully submitted,


Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Counsel for Rails to Trails
Conservancy

Verification

I, Andrea Ferster, affirm that I am General Counsel for Rails to Trails Conservancy, that I have read the foregoing motion, and that the facts asserted therein are true and correct to the best of my knowledge, information and belief.

State of Virginia
County of Fairfax


Andrea Ferster

Subscribed to and sworn before me this 11th day of January, 1996.

My Loretta Calkins

My commission expires: July 31, 1994.

Certificate of Service

I hereby certify that I caused copies of the foregoing to be served by U.S. Mail, postage pre-paid, first class, this 11th day of January, 1996, upon

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Vice President and General Counsel, T&P Railway
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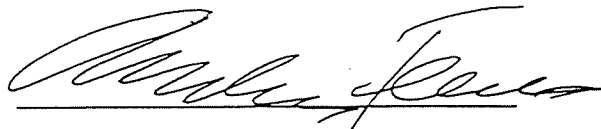


Exhibit A



**AMERICAN
TRAILS**

AMERICAN TRAILS

Leading the nation in the creation of trails systems for all Americans.

January 2, 1996

Secretary
Surface Transportation Board
12th & Constitution Avenue NW
Washington DC 20423

Sirs:

This letter is on behalf of American Trails, a national non-profit organization registered in Washington, D. C. The name "American Trails" was filed September 12, 1988, as a result of a merger with American Trails Network and National Trails Council. American Trails works with individuals, communities, organizations, and agencies throughout the United States and Canada on behalf of trail advocacy, information sharing, and trail development.

American Trails publishes the national newsletter Trail Tracks and hosts the National Trails Symposium. Since 1988 the Symposium has been held as a nationwide event in Anchorage, Alaska; Missoula, Montana; Cedar Rapids, Iowa; and Unicoi, Georgia. We have used the name American Trails on stationary, in publications, in correspondence, in contracts, and in business with state and national agencies and organizations.

We are extremely concerned to learn of the unauthorized use of the name American Trails and are taking appropriate legal action to stop this use. We have had no correspondence from A&K Salvage nor have we given them permission in any form to use our organization's name. We are furthermore unaware of any connection between the bona fide trails community and the entity of A&K Salvage known as American Trails Association, Inc.

Sincerely,

Stuart H. Macdonald
Secretary, American Trails

P.O. Box 200787
Denver, CO 80220
303/321-6606
fax 303/321-6864
email AmTrails@aol.com

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUSINESS REGULATION ADMINISTRATION



C E R T I F I C A T E

THIS IS TO CERTIFY that all applicable provisions of the DISTRICT OF COLUMBIA NONPROFIT CORPORATION ACT have been complied with and accordingly, this CERTIFICATE of MERGER is hereby issued to NATIONAL TRAILS COUNCIL, INC.

MERGED INTO:

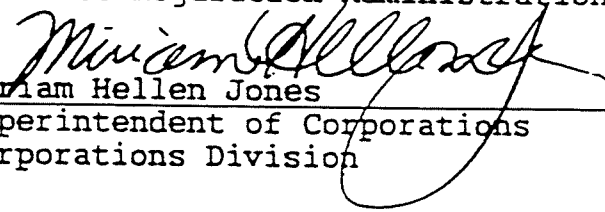
AMERICAN TRAILS NETWORK (NAME CHANGED TO)

AMERICAN TRAILS

as of SEPTEMBER 12th , 1988 .

Donald G. Murray
Director

Henry C. Lee, III
Administrator
Business Regulation Administration


Miriam Hellen Jones
Superintendent of Corporations
Corporations Division

Marion Barry, Jr.
Mayor

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUSINESS REGULATION ADMINISTRATION



THIS IS TO CERTIFY that the pages attached hereto constitute a full, true and complete copy of:

CERTIFICATE AND ARTICLES OF INCORPORATION OF AMERICAN TRAILS
NETWORK AS RECEIVED AND FILED MAY 3, 1988.

as the same appears of record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of this office to be affixed, this the 25th day of OCTOBER, 1988.

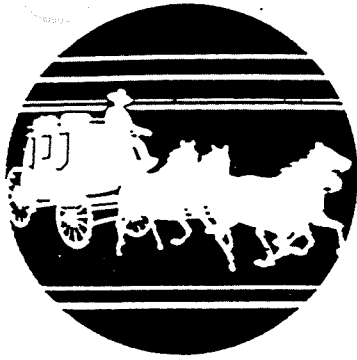
Donald G. Murray
Director

Henry C. Lee, III
Administrator

Vandy L. Jamison, Jr.
Assistant Vandy L. Jamison, Jr
Superintendent of Corporations
Corporations Division 38

Government of the District of Columbia
Marion Barry, Jr., Mayor

Exhibit B



KANSAS STATE HISTORICAL SOCIETY

HISTORIC PRESERVATION OFFICE

Center for Historical Research

120 West Tenth * Topeka, Kansas 66612-1291

913-296-7080 * FAX 913-296-6622

May 20, 1993

Interstate Commerce Commission
Attn: Tawana Sanders
Washington, D.C. 20423-00001

RE: Docket No. AB-381
T and P Railway

Dear Commissioners:

The applicant has been less than diligent in providing to us the information we originally requested on September 3, 1992, and in subsequent letters. As of this date we still have not received any data that would allow us to state definitively whether the subject line possesses sufficient historical significance to be eligible for the National Register of Historic Places. That may be a moot point, however, since conversations with staff of the Advisory Council on Historic Preservation as well as state preservation office staff in other states have convinced us that the most that could be gained by historical designation would be preservation of the right of way. Inasmuch as it has already been agreed that the subject right of way would be turned over to Kansas Wildlife and Parks under the railbanking provisions and the applicant has agreed that the bridges would remain intact, it does not seem that anything more would be gained by the SHPO continuing to insist on additional information about the history of the line. Subject to the applicant carrying out those provisions, the state historic preservation officer will not object to the removal of the rails, ties, and portion of the ballast.

Sincerely yours,

Ramon Powers
State Historic Preservation Officer

Exhibit C



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612
913/296-2281 FAX 913/296-6953



Memorandum

DATE: January 4, 1996
TO: Charles H. Montange
FROM: Mike Engeman, Kansas Department of Wildlife and Parks *ME*
Re: Topeka to Parnell

This is to confirm that my agency did not enter into a railbanking/trail agreement with A&K Salvage or one of its affiliated companies for preservation of the Parnell to Topeka corridor. A&K or its assignees have destroyed portions of the roadbed, and have removed all cross ties from a key bridge, rendering trail development much more difficult. The facility is not open as a trail, and we are aware of no plans by its current owner to open it as a trail, or otherwise to use it as a trail. Furthermore, it is my understanding that A&K and its assignees are no longer offering to donate the facility for trail use. Nonetheless, there is considerable interest in several of the local communities in preserving the corridor intact, both as a trail and for possible future rail use, as well as to preserve historic resources on the corridor.

This also is to confirm my understanding that you may file this memorandum with the Surface Transportation Board in connection with a motion to reopen ICC Dkt. AB 381, T&P Railway, Exemption, Parnell to Topeka, KS.

LAW OFFICES
FRITZ R. KAHN, P.C.
SUITE 750 WEST
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934
(202) 371-8037
FAX (202) 371-0900

January 25, 1996

VIA HAND DELIVERY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Dear Secretary Williams:

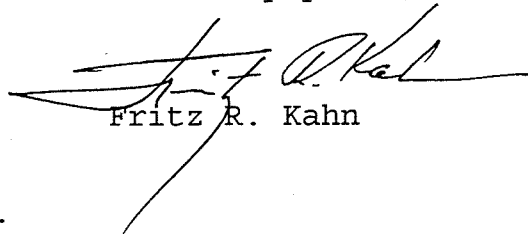
Enclosed for filing in Docket No. AB-381 (Sub-No. 1X), T and P Railway--Abandonment Exemption--In Shawnee, Jefferson and Atchison Counties, KS, are the original and ten copies of the Reply of American Trails Association, Inc., and T and P Railway, Inc.

Extra copies of the Reply and of this letter are enclosed for you to stamp to acknowledge your receipt of them and to return to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, service is being effected upon counsel for each of the parties.

If you have any question concerning this filing or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.
cc: Charles H. Montange, Esq.
Roth A. Gatewood, Esq.
Thomas F. McFarland, Jr., Esq.
Mr. Tom Ryan
Michael J. Van Wagenen, Esq.

4-57

~~4-56~~

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

Docket No. AB-381 (Sub-No. 1X)

T AND P RAILWAY--ABANDONMENT EXEMPTION--IN
SHAWNEE, JEFFERSON AND ATCHISON COUNTIES, KS

REPLY
OF
AMERICAN TRAILS ASSOCIATION, INC.,
and T AND P RAILWAY, INC.

Fritz R. Kahn
Fritz R. Kahn, P.C.
Suite 750 West
1100 New York Avenue, NW
Washington, DC 20005-3934
Tel.: (202) 371-8037

Dated: January 25, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

Docket No. AB-381 (Sub-No. 1X)

T AND P RAILWAY--ABANDONMENT EXEMPTION--IN
SHAWNEE, JEFFERSON AND ATCHISON COUNTIES, KS

REPLY
OF
AMERICAN TRAILS ASSOCIATION, INC.,
and T AND P RAILWAY, INC.

American Trails Association, Inc. ("ATA"), and T and P Railway, Inc. ("T&P"), pursuant to 49 C.F.R. 1104.13(a), reply to the Motion to Reopen Proceeding to Investigate Propriety of Revoking Notice of Interim Trail Use, tendered by the Rail to Trails Conservancy ("RTC") on January 11, 1996, as follows:

A.

RTC lacks standing to
request the relief it seeks.

RTC was not a party to this proceeding; nor by its tendered pleading does it seek leave to become a party to this proceeding. It, therefore, is without standing to petition for the proceeding's reopening. The statutory authority of the Board to reopen a proceeding is explicit. 49 U.S.C. 722(c), formerly 49 U.S.C. 10327(g) (1), specifically provides:

The Board may, at any time on its own initiative because of material error, new evidence, or substantially

changed circumstances--

- (1) reopen a proceeding;
- (2) grant rehearing, reargument, or reconsideration of an action of the Board; or
- (3) change an action of the Board.

An interested party may petition to reopen and reconsider an action of the Board under this subsection under regulations of the Board.

RTC is not and never has been an interested party within the terms of the statute, and, therefore, pursuant to 49 C.F.R. 11104.10, its request to reopen this proceeding must be rejected out of hand, and its pleading, returned unfiled.¹

B.

RTC's arguments
are repetitive.

Even if RTC's tendered pleading were capable of being filed, the motion, nevertheless, would need to be denied, for it fails to set forth good grounds for reopening the proceeding. First and foremost, RTC seeks reopening because of the affiliation of ATA and T&P; in doing so, RTC rehashes arguments previously considered by the Interstate Commerce Commission and found by it to be wanting.

In his Petition to Rescind the Decision and Notice of Interim Trail Use and Abandonment, dated April 26, 1994, Mr. Daryl Becker argued that the NITU should have been revoked because ATA was an

¹ It is doubtful that the Board would be able to reopen the proceeding even if RTC were a party. As RTC acknowledged, at page 7 of its tendered pleading, this proceeding is the subject of a petition for review in No. 95-1481, Becker v. I.C.C., before the United States Court of Appeals for the District of Columbia Circuit, which, pursuant to 28 U.S.C. 2349(a) now "has jurisdiction of the proceeding."

affiliate of T&P. ATA and T&P, in their joint Reply, filed May 16, 1994, responded that the argument was specious; nothing in the statute or the Commission's implementing regulations suggests that private organizations acquiring the right-of-way under the National Trails System Act, 16 U.S.C. 1247(d), cannot be a corporate affiliate of the railroad authorized to abandon the line that had been located on it.

The Commission agreed. In its decision, served July 20, 1995, the Commission concluded:

[T]he corporate connection between American Trails and TAP is not dispositive. The Commission views the issuance of a NITU or CITU as a ministerial act. We do not analyze, approve or set the terms for the interim trails use arrangement, nor do we rule on the "qualifications" of a particular trail proponent, other than to ensure that the statutory qualifications (willingness to assume and to continue to meet the full financial responsibility for the line and to agree to railbanking for potential future reactivation of rail service) are met. See 49 CFR 1152.29(a) and Rails to Trails Conversions, supra. Our discretion in issuing a NITU does not, therefore, extend to investigating either the corporate character or the financial health of the organization requesting a trail use agreement.

RTC, in its tendered motion, fails to specify in what respects the Commission had committed material error in reaching its conclusion. It excerpts no statutory provisions, quotes no legislative history and cites no Commission or court decision that would indicate that the Commission had erred. In the absence of material error on the Commission's part, however, there is no cause for the Board to reopen this proceeding.

Failing to find error in the Commission's decision, RTC lashes out at ATA, declaring that is not a "trail proponent" or a "trail

group." These terms, however, are foreign to the statute and the Board's regulations. 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29 state that "any state, political subdivision or qualified private organization" can acquire a right-of-way for railbanking, and, significantly, neither the statute nor the Board's regulations defines who may qualify as a private organization. ATA is as qualified as anyone else to railbank a right-of-way of a line authorized for abandonment, and RTC points to nothing to suggest otherwise.

Finally, RTC irresponsibly and recklessly calls ATA's acquisition of the T&P right-of-way a subterfuge and a ruse. As we next shall show, however, its charges are unfounded and reprehensible.

C.

ATA has been faithful
to its Trails Act commitment.

The statute and the Board's regulations are explicit in setting out the obligations of persons acquiring rights-of-way under the National Trails System Act. 16 U.S.C. 1247(d) and 49 C.F.R. 1252.29 require such persons "to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way."

RTC fails to specify in what respects ATA has failed to fulfill its statutory and regulatory obligations in holding the right-of-way of the T&P line. Indeed, RTC cannot show such a

breach, for ATA has committed none.

RTC points to two occurrences which it claims are inconsistent with ATA's obligations under the National Trails System Act. It notes that ATA removed the ballast from part of the right-of-way and the ties from one of its bridges. There was good reason for ATA's doing both. The ballast was salvageable, and, as long as it was undertaking the financial obligations for maintaining the right-of-way, ATA had every right to try to offset the taxes it paid and the costs it incurred. As for the removal of the ties from one of the bridges, that was done by ATA after learning that youngsters were playing on the bridge, in a perfectly reasonable attempt to discourage such conduct and to reduce the risk that one of them might be injured in a fall from the bridge. How such action on ATA's part jeopardizes the railbanking of the right-of-way and its trail use in the meantime is difficult to fathom. Certainly, ATA did not regrade the right-of-way, removing the berm; ATA did not tear down the bridge and sell it for scrap. The berm and bridge remain in place, ready to be used whenever the right-of-way is readied for hiking or biking purposes. We never have known a right-of-way acquired under the National Trail System Act not to require resurfacing before it could be opened for hiking or biking purposes, and such resurfacing in no way is dependent upon the ballast remaining on the berm or the ties on the bridge. RTC's is a strawman argument, at best.

RTC, at page 2 of its tendered Motion, claims the T&P right-of-way is an excellent candidate for railbanking and interim trail

use. It says the Kansas Department of Wildlife and Parks, the Kansas Department of Transportation, the Atchison Chamber of Commerce, the Glacial Hills Resource Conservation and Development Council and other bona fide entities have expressed interest in preserving the T&P right-of-way as a trail.² None, however, as yet has come forward and offered to sign a Statement of Willingness to Assume Financial Responsibility and thereafter to succeed to ATA's interest in the T&P right-of-way, as is contemplated by 49 C.F.R. 1152.29(f).

Indeed, it might be well if RTC put its money where its mouth is. If, as it suggests, ATA is such a poor custodian of the T&P right-of-way under the National Trails System Act, why doesn't RTC express its willing to become ATA's successor? RTC, at page 1 of its tendered Motion, claims that it "is dedicated to the preservation of otherwise to-be-abandoned rail corridors for possible future rail reactivation." We have searched RTC's tendered pleading, however, and we find nothing to suggest that RTC is prepared to assume responsibility for the management of the T&P right-of-way and the payment of any taxes or other expenses associated with its railbanking and trail use in the interim.

RTC, it is all too evident, is all talk and no action.

WHEREFORE, American Trails Association, Inc. and T and P

² RTC says that the State Historic Preservation Officer sought the imposition of no condition, mistakenly believing the right-of-way would be acquired by the Kansas Department of Wildlife and Parks. The State Historic Preservation Officer, however, has not been heard to complain, and we did not think that RTC has a license to act as a private attorney general.

Railway, Inc., ask that the Motion of the Rail to Trails Conservancy to Reopen Proceeding to Investigate Propriety of Revoking Notice of Interim Trail Use, tendered January 11, 1996, be rejected or denies.

Respectfully submitted,

AMERICAN TRAILS ASSOCIATION, INC.
and T AND P RAILWAY, INC.

By their attorney,



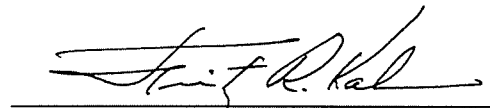
Fritz R. Kahn
Fritz R. Kahn, P.C.
Suite 750 West
1100 New York Avenue, NW
Washington, DC 20005-3934
Tel.: (202) 371-8037

Dated: January 25, 1996.

CERTIFICATE OF SERVICE

Copies of the foregoing pleading this day were served by me by mailing copies thereof, with first-class postage prepaid, to counsel for each of the parties.

Dated at Washington, DC, this 25th day of January 1996



Fritz R. Kahn

March 15, 1996

Senate Energy & Natural Resources Committee
State Capitol, Room 254 E
Topeka, KS 66612

Regarding: Substitute House Bill 2711

Dear Committee Members,

On behalf of the Johnson County Bicycle Club, thank you for the opportunity to appear before this Committee to stand in opposition to Substitute House Bill 2711 and address the club's concerns regarding certain recreational trails. I appear today as a Board of Directors member of a bicycle club which has, for over 25 years, promoted the safe use of bicycles for recreational, utilitarian, transportation and sport purposes.

Since the early 1970's bicycling has experienced a steady growth in both sales of bicycles and types of bicycling. The number of bicyclists utilizing the roadways and off-road recreation trails is steadily increasing. Our members and thousands of other bicyclists in Johnson County routinely utilize the roads and trails in and around Douglas, Franklin, Johnson, Leavenworth, Miami, Shawnee, Wyandotte Counties and other counties. Soon we will be able to enjoy the 17 mile, Phase 1 of the new Prairie Spirit Rail Trail in Anderson County and hopefully the remaining 33 miles of this proposed rail trail in the near future. The Johnson County Bicycle Club's members frequently travel throughout the country, and in some cases overseas, to enjoy their favorite recreational pursuit.

For many years other regions of the country have successfully used abandon rail lines to provide a safe, scenic alternative to the busy roads and highways for bicyclists and their families. Kansas is finally joining the rest of the country in its realization of the great resource abandon rail lines can once again become. However, Sub. HB 2711, threatens to severely limit the potential use of any abandon rail lines for trail use. The unjust financial burden required by Sub. HB 2711's stipulation for a maintenance escrow or bond from any private individual or organization developing a recreational rail-trail project in effect will prevent any private individuals or organizations from financially being able to undertake a rail-trail project. Why are private recreational rail trail conversions singled out in their requirement of having a maintenance bond or escrow when other types of established private recreational facilities dependent on public usage, such as golf courses, campgrounds, lakes, hunting preserves, etc., are not required to? All of these facilities have "adjacent property owners" as well. Additionally, these private recreation providers would be able to recoup the cost for a maintenance bond or escrow through their usage fees, if it were required. Rail trail conversions are traditionally open to the public without fees and thus limited in their ability to recoup such unjust costs.

Senate Energy & Natural Res.
March 15, 1996
Attachment 5

The requirements for fencing as stipulated by Sub. HB 2711 does not allow for the responsible party to undertake practical negotiations with adjacent property owners to determine whether or not an adjacent property owner wants or needs a hog wire fence topped with three strand barb wire along their property. Many sections of rural rail lines already have acceptable hog and barb wire fence along the edges of their right-of-way. According to Sub. HB 2711, a second, paralleling fence would be required. This would be redundant and a waste of financial and material resources, be it public or private resources.

The responsible party should be allowed the flexibility to work with adjacent property owners to be able to purchase or accept the donation of existing suitable fences along common property lines. The responsible party and the adjacent owner should be allowed to determine between themselves who will provide perpetual maintenance of their common fence. Within the city limits of communities through which a rail trail passes, hog wire fencing topped with barbed wire would be hazardous to children, as well as unsightly and undesired by a likely majority of residences adjacent to the rail trail. If the rail trail passes through a public park or other publicly accessible land, the government entity having jurisdiction over the public land should be able to release the responsible party from constructing and maintaining a hog and barb wire fence along the rail trail. This exact scenario of residences and a public park along the proposed Prairie Spirit Rail Trail exists in Ottawa, KS, today. This requirement would additionally add approximately \$10,000 per mile of trail to the cost of any rail trail project, whether it be a public or private project. Do we really want our tax dollars spent on redundant and potentially hazardous fencing when it may not be needed or wanted?

The language in Sub. HB 2711 which allows city and government entities to have virtual veto authority over federal legislation speaks of unconstitutional authority. While this authority has never been tested in court to determine the constitutional validity of such local authority, the result and underlying intent to place undo hardships on public and particularly private entities is contradictory to the spirit of the federal railbanking legislation. If this legislation is allowed to pass in its current form and results in the loss of future rail trail conversion, please remember these unique corridors will be lost to any other future use, be it for reconversion to rail or any other transportation or transmission use. 150 years ago the only transportation corridors were wagon trails, such as the Santa Fe and the Oregon Trail. Within the next 50 years the rail system grew and then came the highway and aviation system we have today. Are we willing to risk giving away these corridors when we do not know where the next 50, 100 or 150 years may take us?

The Johnson County Bicycle Club's last objection to the impacts of this bill goes to the very core of justification for undertaking rail trail conversions - economic development. The majority of the rail trail projects will be located in rural areas of our beautiful state. Too many of our small towns are struggling to stay alive due to the lack of a diversified economic base. Many of these towns have also lost one of their economic arteries, the rail line. Rail trail conversions represent an opportunity to pump some well deserved and needed life back into these towns and communities. This does not mean just a few isolated communities. The economic benefit can be felt across the entire state. The potential exists today to cross the entire state from east to west with a continuous rail trail touching hundreds of towns and cities that would be unmatched

anywhere else in the country. One possible rail trail could eventually link the famous 200 mile KATY Trail in Missouri , through Kansas and continuing on to Colorado and the Rocky Mountains. One could then truly enjoy Kansas at a pace significantly slower than the stereotypical view many have of Kansas going 75 miles per hour down the interstate. This would put Kansas on the recreational and tourism map with, as of yet, untapped economic potential. According to a recent article in the March 14, 1996, issue of the Wall Street Journal rail trails generate an average of over \$2,000,000 revenue per trail. This new tourism revenue almost exclusively benefits the rural communities through which they pass.

But, it has to be allowed to happen with the full support of the State Legislature and encouragement through positive, re-enforcing legislation. Restrictive and burdensome legislation, such as Sub. HB 2711, which places unjust hardship on private organizations or government entities, is inflexible in its implementation, allows for potentially unconstitutional local authority, and jeopardizes the future of our rural communities, only serves to jeopardize these resource corridors. We sincerely request your opposition to Sub. HB 2711 and respectfully ask this committee to respond with legislation that will encourage and streamline the conversion of abandon rail lines to recreation trails. Legislation that brings a renewed life and vitality to the great rail legacy of Kansas and to its many proud rural communities is what Kansas needs. An improved Sub. HB 2711 would allow Kansas and its tourist the opportunity to experience rural America by the rhythmic paces of a bicycle, a horse or on foot.

I would like to thank the Representatives and legislative research assistants who worked hard to rewrite the disastrous HB 2711. While Sub. HB 2711 is an improvement over its predecessor, we feel it can be made into an even better bill. A bill that promotes the preservation of our resources rather than restricting their use, that encourages private participation and philanthropy by providing public recreational and economic opportunity rather than discouraging it, and that celebrates Kansas' heritage with a new future rather than forgetting its past.

I would like to thank this Committee for the opportunity to be involved in the deliberations on Sub. HB 2711 and being allowed to present the views of the Johnson County Bicycle Club and the bicycling community throughout the state.

Sincerely,



Dale V. Crawford
Board of Directors
Johnson County Bicycle Club

Residence:

1421 Willow
Olathe, KS 66062-1732

Phone-(913)791-8217 - Day
(913)829-6588 - Evening



KANSAS DEPARTMENT OF TRANSPORTATION

E. Dean Carlson
Secretary of Transportation

Docking State Office Building
Topeka 66612-1568
(913) 296-3566
TTY (913) 296-3585
FAX (913) 296-1095

Bill Graves
Governor of Kansas

TESTIMONY BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
REGARDING HOUSE BILL 2711

March 15, 1996

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today to testify regarding House Bill 2711. This bill proposes to place certain conditions on the development and operation of recreational trails.

The Kansas Department of Transportation (KDOT) has a limited but important role in recreational trail development in the State. KDOT administers the Transportation Enhancements (TE) program that is part of the federal aid highway program. Funding from this program is available for several types of nontraditional transportation projects including facilities for bicycles and pedestrians. This has become a very popular program. Since first awarding TE funds in 1992, KDOT has approved projects with total costs of approximately \$36.5 million. Of this amount, \$17.8 million has been for construction or improvements of bicycle and pedestrian facilities that are often off-road trails or paths.

If KDOT were not administering the Transportation Enhancements program, we would not be appearing on this bill. We are trying to administer this program as fairly and equitably as we can. Although we do not have any specific policy on rails to trails, we do have some concerns on this bill which we would like to bring to your attention for your consideration.

Senate Energy & Natural Res.
March 15 1996
Attachment 6

Two major concerns we had with the original bill as introduced in the House have been alleviated in the new version of the bill. One of those concerns was that the definition of recreational trails was overly broad and the other was the issue of taxes. However, we still have a number of concerns about the bill.

In general, we believe any recreational trail where the responsible party is a governmental entity should be exempted from the provisions of this bill. Interested parties generally have ample opportunities for recourse with a governmental entity.

Specifically, we believe Section 2(a)(8), which requires the responsible party to provide for law enforcement along the trail, is troubling. It is not clear if the legislation would require additional enforcement resources beyond the regular staff of the Kansas Highway Patrol or that of local law enforcement, including county sheriffs, on State or local government sponsored projects. KDOT does not believe that it is necessary to provide additional law enforcement officials dedicated exclusively to a recreational trail.

Section 2(a)(10), which requires fencing to the same extent as required of railroads, could be excessive and might drive up the costs of these projects considerably. The requirement for fencing might also detract from the visual aesthetics of a trail.

Section 2(a)(11) concerning maintenance is vague and very open to interpretation.

This legislation may conflict with the National Trails System Act by imposing additional requirements beyond those required by the federal act. One objective of the federal legislation is to preserve existing rail corridors for transportation and this legislation may hinder that function.

Thank you for the opportunity to provide input regarding this legislation.

TESTIMONY GIVEN BEFORE
THE ENERGY AND NATURAL RESOURCES
COMMITTEE
KANSAS STATE SENATE

BY

DARYL BECKER
RR #1
MERIDEN, KANSAS 66512

Senate Energy & Natural Res.
March 15 1996
Attachment 7

Members of the Energy and Natural Resources Committee,
I am Daryl Becker of Meriden, Kansas. Meriden is located 12
miles Northeast of Topeka and is one of the towns in Jefferson
County the original line of the Atchison, Topeka and Santa Fe
railroad passed through.

I have lived all of my life, with the exception of college
and the Air Force near Meriden. My Father lived all his life
and my Grandfather homesteaded our farm in the 1870's. Now,
my Son lives on our family farm located 1½ miles Southwest of
town. We have approximate 1 3/4 miles of right-of-way on this
farm.

A few years ago the Santa Fe Railroad abandoned this line,
selling it to A&K Salvage Company of Salt Lake, Utah. A&K formed
a Kansas corporation by the name of T&P Railroad. This stands
for Topeka to Parnell, a small community just Southwest of Atchison,
which is the Northeast terminus of this 42 mile line. The T&P
Railroad Company sold the rails, ties and balast, which has now
been removed.

About a year ago, the T&P Railroad Company sold the right-of-
way to American Trails, Inc., another Kansas Corporation with the
same officers and address as T&P Railroad and A&K Salvage Company
of Salt Lake, Utah. They incorporated this corporation with a
capital of \$10,000.00 for the maintenance of a trail for the next
99 years.

Since the salvage has been completed, nothing has been done
with the right-of-way. The brush and weeds are growing up. Last
Summer the County did spray for thistles. It has become a very
convenient trash dumping ground as we are bordered by county roads
on each end of our farm, which gives easy access. We have lots of
vehicle traffic in the form of four wheel drive, motorcycles and
ATV's. There are also many people already using it for walking and
hunting.

My biggest complaints come from this type of usage. Last Spring when we were working ground for planting. Four men had set up a target and were using the old right-of-way as a rifle range. We moved to another field as the thought of stray bullets from hi-power rifles didn't agree with us. We could not go over and kick them off as it is not our land.

Then last Fall when we were cutting soybeans the vehicle tracks in our fields where they had turned off the right-of-way and driven across the field, made for many bad words. For you non farmers, soybeans are cut with the header of the combine floating on the ground. With the cost of our newer combines, you are not going to cut in the dirt. Therefore, each time a set of tracks is ahead, you raise the header and go over them, leaving beans in the field. This is so easy for anyone drive in the fields as there is no fence left bordering the right-of-way.

I am so happy someone wrote and introduced #2711 in the House. Representative Jerry Henry sent me a copy or I would not have known of its existance. I noticed that the original bill contained a stipulation that any trail group had to pay the taxes on the right-of-way, but the Substitute #2711 does not mention taxes. I feel the taxes should be assessed on the same basis as the adjoining land that is privately owned and that the trail group should be responsible for them, just like we are.

Our farmstead sets less than a quarter mile from the right-of-way. There are two things I wish you would add to this Bill. We have already encountered people walking up to the house asking to use the rest room and get a drink. We are seven miles north of the South end of this old line, so people are just ready for a stop about then. There are two necessities people must have, a drink and a restroom. This is just a little spooky when a group of people are at your door asking to use the restroom and you don't know them. Do you let them in or not.

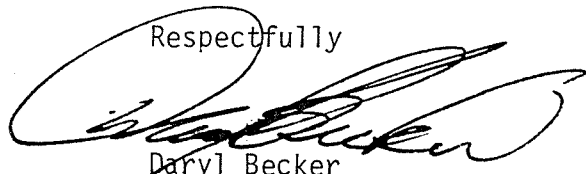
On this same issue, we have witnessed many times while farming, people using our timber for a restroom. We happen to have two tracts of timber bordering the right-of-way on our farm. As I said, being seven miles from Topeka, we are located at the point people need a restroom, and our timber is the first they see walking Northeast.

Therefore, I wish you would add to this bill that the trail group must provide drinking facilities and restroom facilities at periodic locations on the trail.

I also wish you could spell out more clearly what will happen if the trail group does not comply with this law. Something to the effect that after a year, the group has not met all of the requirements, they are deemed to be in default. Then a six month period for another trail group to come forward and take over the responsibility. If this does not happen, the right-of-way reverts to the adjoining landowners, which should have happened in the first place.

Thank you so very much for allowing a landowner to discuss this matter with you today. I appreciate your consideration of this issue and the suggestions I have made.

Respectfully



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